Supreme Court, U.S.
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02-1789 JUN 6 2003

In The

Supreme Court of the United States

In re AUGUSTUS J. SIMMONS,

Petitioner.

On Petition For Writ Of Habeas Corpus To The United States District Court, District of Connecticut

PETITION FOR WRIT OF HABEAS CORPUS

AUGUSTUS SIMMONS
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QUESTION PRESENTED

The federal question, pursuant to 28 U.S.C. § 2254, is whether petitioner/owner is being held in custody in violation of the constitution, laws, or treaties of the United States by the decree of the Supreme Court of Connecticut in *Simmons v. Wetherall*, 180 Conn. 587 (1980), an Only Remedy 1970 Tort Action without a single hearing in damages – foreclosed on May 31, 2000 notwithstanding two (2) null and void condemnations; transcending the limits of its authority that is VOID on its face without jurisdiction of the subject matter – or the parties; without any mesne process initiated before the original courts of competent jurisdiction of Connecticut; without any docket number, decree, judgment, stipulation, contract, agreement regarding real property acquisition before the Superior Court upon which the Supreme Court could act upon; denial of a day in court and a full and fair hearing; where the incidents of INTENT TO DEFRAUD were several, significant, and fraudulent as combining of cases to keep "LEASES" between state and federal agencies of petitioner's real property without notice or compensation to the owner – out of court and out of the record; canceling fifteen (15) hearing dates for damages on first day of appearance by private counsel (Rogin-Hirtle, Esq.'s); placing of encumbrances against the real properties without notice or service of process on interested and necessary parties – without any pre- or post-deprivation hearings for real property contracts; that upon the rejection, repudiation, disassociation and constitutional right NOT to entertain, accept, assign, use a fraudulent "verbal" offer by refusing to tender any deeds on April 19, 1978 to discharged and

QUESTION PRESENTED – Continued

withdrawn private counsel (Rogin-Hirtle, Esq.'s) acting in joint representation simultaneously of petitioner/owner and respondent – the petitioner (plaintiffs)* were denied due process of law.

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* Refers to lien-holders on land records on June 5, 1978 and all subsequent attachments.

PARTIES TO THE PROCEEDING

Petitioner:

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OPINIONS BELOW

There was no order from the United States District Court for the District of Connecticut on April 27, 2003, as the Clerk refused to file or even accept for filing the Application for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 by a Person in State Custody.

On October 7, 2002, the Superior Court of the State of Connecticut at Rockville (S. Fuger, J.) granted the State's Motion to Dismiss the Petitioner's Petition for Habeas Corpus and on October 22, 2002, denied the Petitioner's Application for Permission to Appeal.

On August 20, 1998, the Superior Court of the State of Connecticut, Geographical Area 13, Enfield (Harleston, J.) filed a Criminal Judgment in three separate cases against Petitioner and on May 30, 2000, the Connecticut Appellate Court affirmed the Judgment. On July 13, 2000, the Supreme Court of the State of Connecticut denied Petitioner's Petition for Certification to Appeal.

JURISDICTION OF FEDERAL COURT TO ACT

Citing *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037 (1976) at 3068 reads:

> " . . . insofar as this jurisdiction enables federal district courts to entertain claims that state supreme courts have denied rights guaranteed by the United States Constitution, it is not a case of a lower court sitting in judgment on a higher court. *It is merely one aspect of respecting the Supremacy Clause of the Constitution whereby federal law is higher than state law. It is for the congress to designate the member in the hierarchy*

> *of the federal judiciary to express the higher law.* The fact congress has authorized district courts to be the organ of the higher law rather than a court of appeals or exclusively this court does not mean that it allows a lower court to overrule a higher court. It merely expresses the choice of congress how the superior authority of federal law should be asserted." [*Daniels v. Allen*,] 344 U.S. at 508-510, 73 S.Ct. at 447, 448 [1953] (emphasis in original).

Jurisdiction of this Court is invoked under 28 U.S.C. § 2254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

> [N]or shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

> Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV.

§ 2254 State Custody; Remedies in Federal Courts

(a) The supreme court, a justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the state, or that there is either an absence or available state corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the state, within the meaning of this section, if he has the right under the law of the state to raise, by any available procedure, the question presented.

(d) In any proceeding instituted in a federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court, a determination after a hearing on the merits of a factual issue, made by

a state court of competent jurisdiction in a proceeding to which the applicant for the writ and the state or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit –

(1) that the merits of the factual dispute were not resolved in the state court proceeding;

(2) that the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing;

(3) that the material facts were not adequately developed at the state court hearing;

(4) that the state court lacked jurisdiction of the subject matter or over the person of the applicant in the state court proceeding;

(5) that the applicant was an indigent and the state court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the state court proceeding;

(6) that the applicant did not receive a full, fair, and adequate hearing in the state court proceeding; or

(7) that the applicant was otherwise denied due process of law in the state court proceeding;

> (8) or unless that part of the record of the state court proceeding in which the determination of such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the federal court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record:
>
> > And in any evidentiary hearing in the proceeding in the federal court, when due proof of such factual determination has been made, unless the existence of one or more of the circumstances respectively set forth in paragraphs numbered (1) to (7) inclusive is shown by the applicant.

28 U.S.C. § 2254.

STATEMENT OF THE CASE

Application was made on behalf of petitioner to the United States District Court at Hartford, Connecticut, on May 5, 2003, with the petition for habeas corpus, with exhibits and court record, to the clerk who – REFUSED – to accept the filing.

Reason for refusing was a standing order from Judge Dorsey that "NO PAPERS" of Augustus Simmons will be accepted by the court except by order of Judge Dorsey.

Petitioner, being incarcerated, has no knowledge of what court Judge Dorsey is located at, whether or not he is still sitting as a judge, where and how to reach his honor

and petitioner's position is that the District Court was constitutionally obligated and congressionally mandated to accept the habeas petition and forward to Judge Dorsey for merit evaluation – AND – pass on to another judge inasmuch as the standing order and the – CONTINUING – flagrant constitutional violations, admitted by respondent, DO NOT warrant such a political roadblock.

Because it is the Connecticut Supreme Court that is the – FLY IN THE OINTMENT – it was intent of petitioner to file in both District Court and United States Supreme Court.

Damages

At the very heart of this – PROBLEM CASE – one word identifies the whole problem –(the heading).

Petitioner alleges:

(1) The judicial department must respect and comply with the legislative command (Special Act #170 (1969)) citations omitted.

(2) The judicial department must respect and comply with the congressional command (Title III of Uniform Real Property Acquisition Act, 42 U.S.C. §§ 4651-4655 (1971)) whereby, wherein the Connecticut legislature, per submission from Connecticut Department of Transportation enacted C.G.S. § 48-17a to be in compliance with federal regulations.

(3) Where this 83-year youngster received notice – AGAIN – from social security on May 9, 2003, at the institution that his social security and Medicare payments have been

> suspended due to the incarceration to add to the "DIRTY TRICKS," "ECONOMIC COERCION," "UNCONSTITUTIONAL BEHAVIOR," intentional, willful, judicial disregard by the Connecticut Supreme Court of its previous constitutional mandate to the state Department of Transportation in 160 Conn. 492 (1971) – *"that the prescribed method of taking must be followed,"* is an obvious, glaring violation of the constitution, laws, and treaties of the United States.

Notwithstanding all the claims, jockeying, innuendos, horse feathers, decrees by the Supreme Court of Connecticut, the record is ultra clear that there has not been a single hearing on petitioner's damage action, that the petitioner/owner will – NEVER – yield, transfer, give away, or tender any title, rights, interests, or jurisdiction of one (1) square foot of Simmons' properties (including highway actions) without an assessment of DAMAGES; the reason the properties reverted to the owner in 1972 was to avoid any assessment of damages; the short-circuiting of the superior court and Referee Shapiro on 12/13/77 of fifteen (15) hearing dates by corrupt (Rogin-Hirtle, Esq.'s) with the tacit approval of the Supreme Court of Connecticut was justification for the "KICK ASS" of the corrupt, rotten-to-the-core dual-representatives that stunk up the state.

REASONS FOR GRANTING THE WRIT

Petitioner Augustus Simmons, in state custody over four decades of real property issues seeks a review of Connecticut Supreme Court Decision, *Simmons v. Wetherall*, 180 Conn. 587 (1980) under Title 28 U.S.C. § 2254

wherein the supreme court, a justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the constitution or laws or treaties of the United States.

Question for Review

The federal question pursuant to 28 U.S.C. § 2254 is whether petitioner/owner is being held in custody in violation of the Constitution, laws, or treaties of the United States by the decree of the Supreme Court of Connecticut in *Simmons v. Wetherall*, 180 Conn. 587 (1980), an only remedy 1970 tort action without a single hearing on damages – foreclosed on May 31, 2000 notwithstanding two (2) null and void condemnations; transcending the limits of its authority that is VOID on its face without jurisdiction of the subject matter – or the parties; without any mesne process initiated before the original courts of competent jurisdiction of Connecticut, without any docket number, decree, judgment, stipulation, contract, agreement regards real property acquisition before the superior court upon which the supreme court could act; denial of a day in court and a full and fair hearing; where the incidents of INTENT TO DEFRAUD were several, significant, and fraudulent as combining of cases to keep "LEASES" between state and federal agencies of petitioner's real property without notice or compensation to the owner – OUT OF COURT AND OUT OF THE RECORD; canceling fifteen (15) hearing dates for damages on first day of appearance by private counsel (Rogin-Hirtle, Esq.'s); placing of encumbrances against the real properties without notice or service of process on interested and

necessary parties – without any pre- or post-deprivation hearings for real property contracts; that upon the rejection, repudiation, disassociation and constitutional right *NOT* to entertain, accept, assign, use a fraudulent "VERBAL" offer by refusing to tender any deeds on April 19, 1978 to discharged and withdrawn private counsel (Rogin-Hirtle, Esq.'s) acting in joint representation simultaneously of petitioner/owner and respondent – the petitioner (plaintiffs)* was denied due process of law.

Under the Fourteenth Amendment, plaintiffs were entitled to notice and opportunity to be heard that necessarily required that the notice and hearing should correspond and relief granted should be appropriate to that which had been heard and determined on such notice.

The supporting facts, documents, and exhibits of the motion to dismiss of April 8, 2003 in state criminal court in addition to the docketed related matter on March 3, 2003 (#02-1280) in the United States Supreme Court warrant an immediate release from custody of the owner and the stamp of VOID on the State Supreme Court decision, 180 Conn. 587 (1980).

Claim One

Prisoner is in custody in violation of the constitutional rights of a United States citizen – REFUSING – to tender any deeds to real property on April 19, 1978, and REJECTION, REFUSAL TO ENTERTAIN, TAKE, ASSIGN,

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* Refers to lien-holders on land records on June 5, 1978 and all subsequent attachments.

USE, or APPROPRIATE an unconstitutional, fraudulent "VERBAL OFFER" that was returned to the state treasury on December 23, 1991, which refusal to tender any deeds resulted in a WITHDRAWAL from representation of the owner by the discharged, corrupt, bargaining in bad faith private counsel (Ed Rogin, Sr. & Robert Hirtle, Esq.'s) on April 19, 1978.

The record is crystal clear there *IS NOT, HAS NOT, WAS NOT, COULD NOT* be any mesne process initiated with the court of first jurisdiction (superior) by Rogin-Hirtle, Esq.'s to acquire TITLE, RIGHTS, JURISDICTION to the subject real properties since March 24, 1972 when ownership reverted back to the original owner as a result of two (2) null and void condemnations.

Docket #163875, *Simmons v. Wetherall*, initiated per Special Legislative Act #170 (1969) on January 2, 1970 for DAMAGES as a result of two (2) null and void condemnations never had a single hearing and on May 31, 2000, the Connecticut Supreme Court – CLOSED THE DOORS – denying one (1) dollar just compensation.

Federal law 42 U.S.C. §§ 4653 and 4654 reinforces the mandate on damages with the legislature enacting C.G.S. § 48-17a to comply.

Where the legal fees and associated costs against the first ten (10) years of null and void condemnation attempts, including land not necessary for airport operations, was greater than the fraudulent verbal offer, makes it readily apparent there cannot be a "satisfactory property interest" acquisition without a hearing or award of one (1) dollar compensation.

(1) Supporting Facts: See motion to dismiss in state court, with exhibits, dated April 8, 2003. See also Docket #02-1280 docketed with the United States Supreme Court on March 3, 2003 on a directly related matter.

Claim Two

Claim Two: Lack of jurisdiction of the subject matter and lack of jurisdiction of the person (parties) under 28 U.S.C. § 2254(d)(4) is supported by the following:

(a) Exhibits #6 and 6(a) wherein Hon. John Daly DENIED any "slush funds" to Rogin-Hirtle, Esq.'s pursuant to notice and cite 80 c 599 by Chief Clerk Lucian Jachamovitz in August 1979, *prior* to the supreme court decision of 180 Conn. 587 (1980), that there were NO PROCEEDINGS before the superior court for acquisition of subject properties.

(b) Exhibit #1, transcript of June 4, 1982, *after* 180 Conn. 587 (1980), the state (attorney general's office) challenges the superior court with lack of jurisdiction before Hon. Dupont, A., and, Attorney Walter Bass challenges the superior court with no notices or service on interested and necessary parties resulting in a DENIAL of any payments from the "slush fund" submitted to the court without any mesne process possible by discharged and withdrawn private counsel Rogin-Hirtle, Esq.'s.

(c) Exhibit showing the "RETURN OF FUNDS" to the state treasury for prime reason of not acquiring deeds, title, or rights to the real properties. (Ex. #5).

(d) Transcript of June 4, 1982 acknowledges the fact of NO DOCKET NUMBER, NO NOTICES, NO HEARINGS, NO RETURN OF SERVICE TO SUPERIOR COURT, and GROSS MISCARRIAGE OF JUSTICE BY THE SUPREME COURT OF CONNECTICUT.

e) TRANSMOGRIFYING *Simmons v. Wetherall*, #163875 (1970) tort action into an eminent domain action by the state supreme court in trying to avoid the constitutional requirements of due process is unlawful with United States Supreme Court. See *Standard Oil of New Jersey v. United States*, 221 U.S. 1, 31 S.Ct. 502, 509 (1911).

28 U.S.C. § 2254

(a) Petitioner is in custody in violation of the constitution or laws or treaties of the United States as shown and illustrated by sections (b), (c), and (d) – with exhibits where, citing *Stone v. Powell*, 96 S.Ct. 3037 (1976) at p. 3060 reads:

> "The prevailing constitutional rule is that unconstitutionally seized evidence cannot be admitted in the criminal trial of a person whose federal constitutional rights were violated by the search or seizure. The erroneous admission of such evidence is a violation of the federal constitution."

Also, convicted on the basis of unconstitutionally obtained evidence erroneously admitted against them by the state trial courts, acknowledges that respondents had the right to obtain a reversal of their conviction on appeal in the state courts or on certiorari to this court.

(b) Where there is a total and complete absence of any stipulations, judgments, agreements, contracts in or with the courts of the State of Connecticut for the acquisition of petitioner/owner/prisoner's real property (see Ex. #1 and 6 and 6a), the proceeding by the Connecticut Supreme Court has, per Chief Clerk Jachamovitz, L. (now retired), pie on its face.

(c) Petitioner's remedies have been exhausted after the highest court in the state, forecloses the right to seek just compensation on May 31, 2000, without ever a single hearing or a day in court.

(d) There was never a hearing on the merits of the factual issue by a state court of competent jurisdiction. There was *NO* written findings, *NO* written opinion and *NO* adequate written indicia upon which the Supreme Court of Connecticut could act upon.

Under Section (d) applicant has established and respondent has admitted on the record, that [THERE IS NO RECORD].

Therefore, regards Part (1):

(1) The merits of the factual dispute were not resolved where there was no state court proceeding.

(2) The fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing was not possible without a day in court.

(3) That the material facts were not adequately developed at the state court hearing – was not possible where there was never any

hearings, not even a docket number with the court of competent jurisdiction.

(4) Lack of jurisdiction of subject matter and lack of jurisdiction of the person (parties) has been addressed in opening paragraph of claim two.

(5) Petitioner does not claim indigence.

(6) That petitioner did not receive a full, fair, and adequate hearing is illuminated under Connecticut jurisprudence, and, full and fair opportunity to litigate at pages 5, 6, and 7 of petitioner's motion to dismiss dated April 8, 2003 – that was never addressed.

Petitioner directs the court's attention to page 22 of Ex. #1 relative to taxes and ensuing acknowledgement relative to hearings that reads:

> "Well, paragraph three, and quoting, that the clerk of said court pay to the tax collector for the town of East Granby the sum of 8761.29 together with accrued interest, lien in releases from the sum deposited.
>
> This order was without due process and there was no notification to the tax collector or the clerk, and there was no notification to Mr. Simmons that such an order would be entered. There was no opportunity for the parties to appear in open court and agree or to present evidence on the nature of this order."

(7) That the applicant was denied due process of law in the state court proceeding is acknowledged by respondents within Exhibits #1, 6, and 6a and where neither petitioner nor respondent can submit or offer a transcript,

or excerpts therefrom of non-transpired proceedings. THE QUESTION ANSWERS ITSELF.

(8) Where neither petitioner nor respondent can produce to the federal court that part of the record of the state court proceeding in which the determination of such factual issue was made, such evidentiary hearing in proceeding in federal court will clearly illuminate the fact that the state supreme court proceeded to render the decision of *Simmons v. Wetherall*, 180 Conn. 587 (1980) with – NO RECORD – before the superior court.

Despite all the claims, hoopla, bullcrap, settlements, stipulations, judgments, the record speaks for itself at Vol. 112, page 006 of Exhibit #7 wherein the lien of Attorney Tom Byrne, from condemnation years, remains outstanding since 1974, with several others, attesting to the fact that the supreme court was acting in 180 Conn. 587 (1980) without any notices, service of process, no mesne process, no proceedings before the superior court, attesting to the fact that no title, rights, or jurisdiction was ever acquired.

If the supreme court was of the opinion that the owner did not have a constitutional right to refuse to tender any deeds (Ex. #3), irrespective of any cause or reason, then the answer was a day in court, not a WITHDRAWAL by counsel as was made on April 19, 1978 (Ex. #4).

Co-Conspiratorial Fraud

Without question, the ulterior motive of discharged and withdrawn counsel (Rogin-Hirtle, Esq.'s) in concert

with the state supreme court in disallowing a day in court in damages was to keep the conspiratorial leasing of petitioner's real property by trespasser, Connecticut Department of Transportation to the federal agency, F.A.A., without any notice or compensation to the owner – OUT OF THE RECORD; OUT OF COURT, exposing why the offer was VERBAL and rejected and no deeds.

Petitioner draws the court's attention to Appendix D of Docket #02-1280 of petition for certiorari, a 1974 LEASE entered into after reverting ownership in 1972 after failed condemnations where at page 22 of Appendix D, Item #10 reads:

> *"The lessor hereby warrants that it has acquired and possesses an adequate real estate right in the property described herein, and that it is authorized to grant to the government the rights and interests set forth herein."*

Item #16 at page 25 reads:

> This lease will supersede license DOT-FA73NE-0308 on commissioning of the CAT II ILS System.

IN RETROSPECT, the canceling of the fifteen (15) hearing dates on damages by (Rogin-Hirtle Esq.'s) on December 13, 1977 was of such significant FRAUD that it was grossly improper for the Supreme Court of Connecticut to "cover up," shelter, and shield such an atrocious unconstitutionally-continuing endeavor.

Unconstitutional Seizure-or-Criminal

Was the unconstitutional [SEIZURE] in 1991 by Air National Guard with a grant from the trespasser, Connecticut Department of Transportation of approximately three (3) acres of real property referred to as Parcel "A", totally disconnected and independent from Parcel "C" with F.A.A. appropriation, without notice or compensation a Fourth and Fourteenth Amendments VIOLATION – or – is the owner a criminal in asserting his rights under the federal constitution?

In attempting to evaluate the rights of the owner it becomes necessary to look at the forty (40) year history between the owner and the state, the refusal to tender deeds, the several police power seizures which the owner has attempted to portray to the court in this habeas request.

On the date of this police-power entry (2/2/91) there were fifteen (15) lien-holders against the real property, and, as illustrated in Exhibit #7 several remain as this habeas request is sought.

Three certified notices to remove fence from private property were received by respondent – to no avail. An ejectment action was instituted in federal district court six months ago and the court has refused to act. If the owner permits the encroachment fence to stand – and do nothing – the claim of SQUATTER RIGHTS will be claimed. Under Connecticut jurisprudence, C.G.S. § 48-21, all lien-holders must be paid before the owner. "ECONOMIC COERCION," in violation of 42 U.S.C. §§ 4601-4655 of the Real Property Acquisition Act (P.L. 91-646 (1971)) is the main thrust of state "dirty tricks."

Citing *Stone v. Powell*, 96 S.Ct. at 3060 reads:

> "The prevailing constitutional rule is that unconstitutionally seized evidence (real property) cannot be admitted in the criminal trial of a person whose federal constitutional rights were violated by a seizure. The erroneous admission of such evidence is a violation of the federal constitution." (emphasis added).

Claim Three

Claim Three: Petitioner/prisoner/owner alleges extensive FRAUD, [EGREGIOUS PERJURY] by prosecution to jury of a PURCHASE, DENIAL OF REFEREE TO PROCEED WITH JUST COMPENSATION CLAIMS UNDER FIFTH AND FOURTEENTH AMENDMENTS and/or A FULL AND FAIR OPPORTUNITY TO LITIGATE by denial of A DAY IN COURT.

(a) A "VERBAL OFFER" is unenforceable under the statute of frauds.

(b) The constitution guarantees a hearing in DAMAGES of which there was NONE, notwithstanding two (2) null and void condemnations.

(c) Owner/prisoner was never provided A DAY IN COURT since March 24, 1972 when ownership reverted to the owner after two bumbling unconstitutional condemnations.

(d) There was never any pre- or post-deprivation hearings against the "phoney-baloney" encumbrances on land records.

(e) It was intentional, malicious, bad faith, preplanned fraud to be retained on a contingency basis for fifteen (15) days of hearings on damages before Referee Shapiro by (Rogin-Hirtle, Esq.'s) and on first day of appearance, 12/13/77, to have "AXED" all dates was justification for DISCHARGE that was hand delivered on December 23, 1977 ENDING all authority, right, jurisdiction of the owner's representation.

(f) Several lien-holders remain on the land records that is prima facie evidence that no rights, title, or interest have ever been acquired by the state.

(g) The PILFERING of in excess of $113,000.00 from the unconstitutional, fraudulent, rejected "slush fund" with no opportunity by more senior lien-holders who were never served or had notice was – FRAUD.

(h) Interest must be ascertained on a "valid offer" after decades of litigation with no mention or reference in "verbal offer."

(i) Fourth Amendment protects against illegal, unlawful, unconstitutional – encroachment – seizures.

Sixth Amendment protects rights where ineffective assistance of counsel is demonstrated.

Fifth and Fourteenth Amendments are a guarantee of fair and just compensation.

(j) C.G.S. § 8-129 is the applicable procedural statute relative to written statements of compensation, notices, return of service and no valid judgments can be rendered without

compliance whether by PURCHASE, EXCHANGE, LEASE, GIFT, or in the exercise of EMINENT DOMAIN.

(k) Where the owner has cleared the land records of the "phoney-baloney" encumbrances under C.G.S. § 52-327 on December 2, 1996 (Ex. #7), the incarceration of the owner must cease immediately.

(l) There were never any further condemnation attempts after March 24, 1972.

(1) Supporting Facts: See motion to dismiss in state court, with exhibits, dated April 8, 2003. See also docket #02-1280 docketed with the United States Supreme Court on March 3, 2003 on a directly related matter.

Transcending – Transmogrifying

VOID – VOID – VOID – VOID
Simmons v. Wetherall, 180 Conn. 587 (1980)

That the petitioner is being held in custody in violation of the constitution, laws, treaties of the United States is exemplified with the citation of *Standard Oil of New Jersey v. United States*, 31 S.Ct. at 509.

The federal question is whether, in that court, with such jurisdiction, the defendants were denied due process of law.

Under the Fourteenth Amendment, they were entitled to notice and opportunity to be heard that necessarily required that the notice and hearing should correspond

and relief granted should be appropriate to that which had been heard and determined on such notice.

For even if a court has general jurisdiction, criminal and civil at law and in equity, it cannot enter a judgment which is beyond the claim asserted or, which, in its essential character, is not responsive to the cause of action on which the proceeding was based "though the court may possess jurisdiction of a cause, of the subject matter, and of the parties, it is still limited in its modes of procedure and in the extent and character of its judgments it must act judicially in all things and cannot then transcend the power conferred by the law."

If for instance the action be upon a money demand, the court notwithstanding its complete jurisdiction over the subject and parties, has no power to pass judgment of imprisonment in the penitentiary upon the defendant.

If the action be for a libel or personal tort, the court cannot order in the case a specific performance of a contract.

If the action be for possession of real property, the court is powerless to admit in the case the probate of a will.

The judgments mentioned, given in the cases supposed would not be merely erroneous they would be absolutely void because the court in rendering them would transcend the limits of its authority in those cases.

Shelton v. Wolthausen, 80 Conn. 599 (1908), reads:

> "Where money is paid into court in an action to determine its ownership, it is in the custody of the law, and is to be disposed of only through the

medium of proceedings had in or relating to that cause."

With no proceedings ever initiated since reversal of ownership, even seventy-seven million could not be paid out by the court – more particularly where the owner refused to tender any deeds.

CONCLUSION

It has been a total and complete exercise in futility, as the record indicates, for the lower court (superior) to proceed in any direction, on any motions and has taken the position that because of the previous decision (*Simmons v. Wetherall*, 180 Conn. 587 (1980)) by the Supreme Court of Connecticut – the superior court CANNOT ACT.

Petitioner with the plethora of evidence submitted has demonstrated beyond a shadow of doubt that the Supreme Court of Connecticut has denied rights guaranteed by the United States Constitution – that there was never a "PURCHASE" and pleads for review in determining the constitutionality or unconstitutionality of 180 Conn. 587 (1980).

Petitioner was imprisoned on the perjured, deceptive, distorted testimony of the prosecutor that the state is the owner of Parcel "A" through a "PURCHASE" and the state, not Mr. Simmons is the owner, was put on probation and reimprisoned for purportedly "SWEARING" upon asking two members of Air Guard to leave an area that the owner permits spectator parking on. A prominent sign is displayed at entrance stating the lot is private property.

Evidence of ownership was – NOT PERMITTED – before the jury at criminal trial. Petitioner's defense counsel was ineffective in not offering or submitting Exhibits #1, nor #5, nor #7 that is now before the court.

Respectfully submitted,

Augustus J. Simmons

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APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

APPLICATION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254 BY A PERSON IN STATE CUSTODY

Augustus Simmons #30120,
Petitioner, Full Name and Prisoner Number

Case No. _____
(To be supplied by the Court)

P.O. Box 100
Complete Prison Address
(Place of Confinement)

Somers, CT. 06071

_____

v.

Mark Strange, Warden
Respondent, (Name of Warden or authorized person having custody of petitioner)
(Do not use ***et al.***)

and

John Malone, Asst State Atty,
Additional Respondent.
(List additional persons having custody of petitioner, if any)

Note: If the applicant is attacking a judgment which imposed a sentence to be served in the future, applicant must fill in the name of the state where the judgment of conviction was entered. If the applicant has a sentence to be served in the future under a federal judgment, which he/she wishes to attack, he/she should file a motion under

28 U.S.C. § 2255, in the federal court which entered the judgment.

CONVICTION UNDER ATTACK

1) Name and location of the court which entered the judgment of conviction under attack Superior court, G.A.13, Enfield, Connecticut (Attachment D)

2) Date judgment of conviction was entered August 20, 1998

3) Case number (in state court) CR97-0104930, CR97-0105048, CR 97-0106221

4) Type and length of sentence imposed 8 years imprisonment, suspended after 18 mos., with 5 yrs. probation

5) Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes ✓ No ___

6) Nature of the offense involved (all counts) Crim. Mischief I (C.G.S., 53a-115), Crim. Mischief III (C.G.S., 53a-117), Crim. Trespass I (C.G.S. 53a-107), Crim. Trespass III (C.G.S. 53a-109), Interfering with police (C.G.S. 53a-167a, Tampering with airport property (C.G.S. 15-69) (3 cts.)

7) What was your plea? (check one)

Not Guilty ✓ Guilty ___ Nolo Contendere ___

8) If you entered a guilty plea to one count or indictment, and a not guilty plea to another court or indictment, give details: N/A

9) If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement N/A

10) Kind of trial (check one) Jury ✓ Judge only ___

11) Did you testify at trial? Yes ✓ No ___

DIRECT APPEAL

12) Did you appeal from the Judgment of conviction? Yes ✓ No ___

13) If you did appeal, give the name and location of the court where the appeal was filed, the result, the case number and date of the court's decision (or attach a copy of the court's opinion or order):

Conn. Appellate Court, Hartford, Conn., No. A.C. 18814, Affirmed. 05-30-00, 58 Conn.App. 903 (Attachment E), Cert. Denied (Conn. Supreme Ct.) 07-13-00, 254 Conn. 908 (Attachment F)

14) If you did not appeal, explain briefly why you did not: N/A

a) Did you seek permission to file a late appeal? Yes ___ No ✓

POST-CONVICTION PROCEEDINGS

15) Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes ✓ No ___

16) If your answer to 15 was "Yes," give the following information:

a) FIRST petition, application or motion.

1. Name of court U.S. Supreme Court

2. Nature of Proceeding Petition for Certiorari

3. Claims raised See Claims One, Two, Three herein and Attachments A, B and C

4. Did you receive an evidentiary hearing on your petition, application or motion? Yes ___ No ✓

5. Result Certiorari Denied

6. Date of result I don't remember. 2000 or 2001

7. Did you appeal the result to the highest state court having jurisdiction? Yes ___ No ✓ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order) _____

8. If you did not appeal, briefly explain why you did not No appeal from U.S. Supreme Court

b) As to any SECOND petition, application or motion, give the following information:

1. Name of court Superior Court, J.D. of Tolland, Conn.

2. Nature of proceeding Petition for habeas corpus

3. Claims raised See Claims One, Two, Three herein and Attachments A, B, C

4. Did you receive an evidentiary hearing on your petition, application or motion? Yes ___ No ✓

5. Result N/A

6. Date of result 10-07-02

7. Did you appeal the result to the highest state court having jurisdiction? Yes ___ No ✓ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order) _____

8. If you did not appeal, briefly explain why you did not My petition for certiorari to appeal was denied by Judge Fuger on 10-22-02

c) As to any THIRD petition, application or motion, give the following information:

1. Name of court N/A

2. Nature of proceeding _____

3. Claims raised _____

4. Did you receive an evidentiary hearing on your petition, application or motion? Yes ___ No ___

5. Result _____

6. Date of result _____

7. Did you appeal the result to the highest state court having jurisdiction? Yes ___ No ___ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order) _____

_____

_____

8. If you did not appeal, briefly explain why you did not _____

_____

CLAIMS

17) State concisely every claim that you are being held unlawfully. Summarize briefly the facts supporting each claim. If necessary, you may attach extra pages stating additional claims and supporting facts.You should raise in this petition all claims for relief which relate to the conviction under attack.

In order to proceed in federal court, you ordinarily must exhaust the remedies available to you in the state courts as to each claim on which you request action by the federal court.

Claim One: No jurisdiction over my property. Unlawful taking. See memorandum, Attachment A, page 4

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in support of this claim)

See motion to dismiss, Attachment B and petition for certiorari, Attachment C.

(2) Statement of exhaustion of state remedies as to claim one:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue? Yes ___ No ✓

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not My attorney failed to raise it.

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes ✓ No ___

(d) If you answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

Habeas corpus, petition dismissed 10-07-02, Tolland (Conn.) Superior court, No. CV-01-0003473

(e) Did you receive an evidentiary hearing on your motion or petition? Yes ___ No ✓

(f) Did you appeal from the denial of your motion or petition? Yes ___ No ✓

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes ___ No ___, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

N/A

(h) If your answer to question (e), (f) or (g) is "No," Briefly explain (e) Petition dismissed without evidentiary hearing (f) Judge Fuger denied my petition for certification to appeal

Other Remedies

(i) Describe all other procedures (such as administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

N/A

Claim Two: No jurisdiction over the subject matter or the parties (See memorandum, Attachment A, pages 5-9)

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in support of this claim)

See memorandum

(2) Statement of exhaustion of state remedies as to claim two:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue? Yes ___ No ✓

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not My attorney failed to raise it.

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes ✓ No ___

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

Habeas corpus, petition dismissed 10-07-02, Tolland (Conn.) Superior court, No. CV-01-0003473

(e) Did you receive an evidentiary hearing on your motion or petition? Yes ___ No ✓

(f) Did you appeal from the denial of your motion or petition? Yes ___ No ✓

(g) If you answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes ___ No ___, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

N/A

(h) If your answer to question (e), (f) or (g) is "No," Briefly explain (e) Petition dismissed without evidentiary hearing (f) Judge Fuger denied my petition for certification to appeal.

Other Remedies

(i) Describe all other procedures (such as administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

N/A

Claim Three: Fraud. See Memorandum, Attachment A, pages 10-12

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in support of this claim)

See Memorandum

(2) Statement of exhaustion of state remedies as to claim three:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue? Yes ___ No ✓

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not My attorney failed to raise it.

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes ✓ No ___

(d) If you answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

Habeas corpus, petition dismissed 10-07-02
Tolland (Conn.) Superior Court, No. CV-01-0003473

(e) Did you receive an evidentiary hearing on your motion or petition? Yes ___ No ✓

(f) Did you appeal from the denial of your motion or petition? Yes ___ No ✓

(g) If you answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes ___ No ___, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

N/A

(h) If your answer to question (e), (f) or (g) is "No," briefly explain (e) Petition dismissed without evidentiary hearing (f) Judge Fuger denied my petition for certification to appeal

Other Remedies

(i) Describe all other procedures (such as administrative remedies, etc.) you have used to exhaust your state remedies as to this issue

N/A

18) Have all claims for relief raised in this petition been presented to the highest state court having jurisdiction Yes ✓ No ___

19) If you answered "No" to question 18, state which claims have not been so presented and briefly give your reason(s) for not presenting them N/A

20) If any of the claims listed in this application were not previously presented in any other court, state or federal, state briefly what claims were not so presented, and give your reasons for not presenting them N/A

21) Have you previously filed any type of petition, application or motion in a federal court regarding the conviction under attack? Yes ✓ No ___

If "Yes," answer the following and attach a copy of the court's decision for each petition, application, or motion filed:

a) Name and location of court U.S. Supreme Court

b) Type of proceeding Petition for Certiorari ___

c) The issues raised Same as issues raised here.

d) The result Denied

SUCCESSIVE APPLICATIONS

This court is required to dismiss any claim presented in a second or successive petition that the federal court of appeals has authorized to be filed unless the applicant shows that each claim satisfies the requirements of 28 U.S.C. § 2244, ***as amended*** by Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 106, 110 Stat. 1214 (Apr. 24, 1996).

22) If you are raising a claim which you have not presented in a prior application, have you obtained an order from the United States Court of Appeals for the Second Circuit authorizing this district court to consider the application? Yes ___ No ___ If "Yes," please attach a copy of the order.

23) Do you have any petition, application, motion or appeal now pending in any court, either state or federal, regarding the conviction under attack? Yes ___ No ___. If "Yes," state the name of the court, case file number (if known), and the nature of the proceeding _____

LEGAL REPRESENTATION

24) Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) at preliminary hearing no attorney

(b) At arraignment and plea no attorney

(c) At trial Atty. Geoffrey Naab
295 East Center St., Manchester CT 06040

(d) At sentencing Atty. Geoffrey Naab

(e) On appeal Atty. Geoffrey Naab

(f) In any post-conviction proceeding no attorney

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

OTHER CONVICTIONS

25) Were you sentenced on more than one count of an indictment or on more than one indictment, in the same court and at the same time? Yes ✓ No ___

26) Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes ✓ No ___

(a) If so, give name and location of court which imposed sentence to be served in the future Superior Court, GA 13, Enfield, Conn. CR-03-0127450

(b) and give date and length of service to be served in the future April 8, 2003 – one year

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes ✓ No ___

Wherefore, petitioner prays that the court grant him such relief to which he may be entitled in this proceeding.

_____	/s/ Augustus Simmons
Signature of Attorney (if any)	**Petitioner's Original Signature**
_____	30120
	Petitioner's Inmate Number
_____	
_____	
Attorney's Full Address and Telephone Number	

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the petitioner in this action, that he/she has read this petition and that the information contained in the petition is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at Osborn (Location) on 4/27/03 (Date)

/s/ Augustus Simmons
Petitioner's Original Signature

[Attachments Omitted In Printing]

APPENDIX B

STATE OF CONNECTICUT

DOCKET NUMBER: CV01-3473	:	SUPERIOR COURT
SIMMONS, AUGUSTUS	:	JUDICIAL DISTRICT OF TOLLAND AT ROCKVILLE
V.	:	
WARDEN	:	DATE: OCTOBER 7, 2002

ORDER ON RESPONDENT'S MOTION TO DISMISS

Respondent's motion to dismiss, filed June 26, 2002, requests that this court dismiss the amended petition for habeas corpus in accordance with Practice Book § 23-29 (2) for failure to state a claim upon which relief can be granted. After hearing on the motion to dismiss, this court finds that all issues raised by the petition in both his amended petition as well as at the hearing are not habeas-related. This court finds, consequently, that the petition fails to state any cognizable habeas corpus claims.

Respondent's motion to dismiss is granted. The petition seeking habeas corpus relief is dismissed.

/s/ S. T. Fuger, Jr.
S. T. FUGER, JR., J.

APPENDIX C

STATE OF CONNECTICUT
CRIMINAL JUDGMENT FILE

DOCKET NO.: CR97-104930	SUPERIOR COURT
STATE OF CONNECTICUT	J.D. OF HARTFORD
v.	AT G.A. 13, ENFIELD
Augustus Simmons (NAME OF DEFENDANT	Sept. 2, 1998 (DATE)
446 Main St. East Hartford, CT (ADDRESS OF DEFENDANT)	

Upon the information and/or complaint of the Assistant State's Attorney for said Geographical Area court, the above-named defendant was presented before said court on 4/29/97 and charged with the crime(s) of:

COUNT	CRIME	STATUTE/ ORD. NUMBER
FIRST	Criminal Mischief 1st. degree	53a-115
SECOND	Criminal Trespass 3rd.	53a-109
THIRD	Tampering with Airport Property	15-69
FOURTH		

Said defendant was advised of his/her constitutional rights according to statute by the Hon. Mullarkey, a Judge of the Superior Court, on 4/29/97.

ATTEST:
CLERK OF COURT: /s/ Lucey A. [Illegible]
Deputy Clerk

It appearing that said defendant should have counsel, the Office of the Public Defender was appointed by the Hon. _____ to represent the defendant and on ___ Public Defender _____, appeared for the defendant.

It appearing that said defendant was a minor, the following person was appointed Guardian ad Litem, by the Honorable _____, a Judge of the Superior Court.

NAME OF GUARDIAN: _____ of _____ (Town)

The defendant was called upon to answer said information/complaint on 5/13/97 and thereupon pleaded:

NOT GUILTY, to Count(s) No. 1, 2, and 3.
GUILTY, to Count(s) No. _____
NOLO CONTENDERE, IN WRITING, to Count(s) No. ___

That before the defendant was put to plea on Count(s) No. _____, (s)he was notified, in the absence of the Court, of the contents of a second part of the Information, charging said defendant with having been previously convicted of the crime(s) of: _____ on: ___, at: ___, Superior Court.

Whereupon, the Court advised the defendant of his/her constitutional right to a trial by the Court or by the Jury. That the defendant thereupon elected to be tried by the Court on the count(s) to which (s)he had pleaded not guilty. After a full hearing before the Hon. _____, commencing on ___, and concluding on ___, the Court found the defendant:

GUILTY, to Count(s) No. _____
NOT GUILTY, to Count(s) No. _____
GUILTY, ON THE LESSER INCLUDED OFFENSE, on Count(s) No. ___

That the defendant elected to be tried by a Jury, on the count(s) to which (s)he had pleaded not guilty. The defendant elected to be tried by a jury of six and the case was continued onto the Firm Jury Trial List for this Geographical Area. After a full hearing before the Hon. Harleston, commencing on 4/15/98, the case was committed to the jury which returned a verdict of:

GUILTY, on Count(s) No.: 1, 2, 3 DATE: 6/5/98
TIME: 11:55 A.M.
It was therefore adjudged by the Court that the defendant was guilty in manner and form as charged in said complaint/information on said counts.
Whereupon, the defendant on 6/10/98 duly filed his/her motion to set aside the verdict. The Court, Harleston, J., having heard the parties on said motion, denied the same on 8/20/1998

NOT GUILTY, on Count(s) No.: ___ DATE: ___
TIME: ___
GUILTY, ON THE LESSER INCLUDED OFFENSE, on Count(s) No. ___

The Court accepted and ordered recorded said verdict.

The Trial Court Judge (Harleston) thereafter deferred the imposition of the sentence on the defendant and ordered that the Adult Probation Department file the required pre-sentence report on or before 8/21/98.

The pre-sentence report having been filed and considered, the Court (Harleston, J.) sentenced the defendant to:

PAY A FINE OF $___ on Count(s) No. ___, respectfully, and to stand committed until judgment be complied with.

BE COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF CORRECTIONS, on Count(s) No. 1 for 3 yrs.e/s/a 6 mos, 5 yrs. prob. for a term of ___ at Hartford Correctional Center

EXECUTION OF SAID SENTENCE WAS SUSPENDED, on Count(s) No. ___ after ___ day(s)/ month(s)/year(s) are served on Count(s) No. ___ and the defendant was committed to the care of the Adult Probation Department for a period of ___ mths/yrs. on Count(s) No. ___

Count #2. 3 mos concurrent 5 yrs prob.
Count #3. 5 yrs. e/s/a 1 yr. 5 yrs. prob. consecutive

STATE OF CONNECTICUT
CRIMINAL JUDGMENT FILE

DOCKET NO.: CR97-105048	SUPERIOR COURT
STATE OF CONNECTICUT	J.D. OF HARTFORD
v.	AT G.A. 13, ENFIELD
Augustus Simmons (NAME OF DEFENDANT)	Sept. 11, 1998 (DATE)
446 Main St. East Hartford, CT (ADDRESS OF DEFENDANT)	

Upon the information and/or complaint of the Assistant State's Attorney for said Geographical Area court, the above-named defendant was presented before said court on 4/29/97 and charged with the crime(s) of:

COUNT	CRIME	STATUTE/ ORD. NUMBER
FIRST	Ill Tamp Airport/Equipment	15-69
SECOND	Criminal Trespass 1st	53a-107
THIRD	Interfere with Offcr/Resisting	53a-167a
FOURTH		

Said defendant was advised of his/her constitutional rights according to statute by the Hon. Mullarkey, a Judge of the Superior Court, on 4/29/97.

ATTEST:
CLERK OF COURT: /s/ L. [Illegible] Asst. Clerk

It appearing that said defendant should have counsel, the Office of the Public Defender was appointed by the Hon. _____ to represent the defendant and on ___ Public Defender _____ appeared for the defendant.

It appearing that said defendant was a minor, the following person was appointed Guardian ad Litem, by the Honorable _____, a Judge of the Superior Court.

NAME OF GUARDIAN: _____ of _____ (Town)

The defendant was called upon to answer said information/complaint on 5/13/97 and thereupon pleaded:

NOT GUILTY, to Count(s) No. all counts
GUILTY, to Count(s) No. _____
NOLO CONTENDERE, IN WRITING, to Count(s) No. ___

That before the defendant was put to plea on Count(s) No. _____, (s)he was notified, in the absence of the Court, of the contents of a second part of the Information, charging said defendant with having been previously

convicted of the crime(s) of: _____ on: ___, at: ___, Superior Court.

Whereupon, the Court advised the defendant of his/her constitutional right to a trial by the Court or by the Jury. That the defendant thereupon elected to be tried by the Court on the count(s) to which (s)he had pleaded not guilty. After a full hearing before the Hon. _____, commencing on ___, and concluding on ___, the Court found the defendant:

GUILTY, to Count(s) No. _____
NOT GUILTY, to Count(s) No. _____
GUILTY, ON THE LESSER INCLUDED OFFENSE, on Count(s) No. ___

That the defendant elected to be tried by a Jury, on the count(s) to which (s)he had pleaded not guilty. The defendant elected to be tried by a jury of six and the case was continued onto the Firm Jury Trial List for this Geographical Area. After a full hearing before the Hon. Harleston, commencing on 4/15/98, the case was committed to the jury which returned a verdict of:

GUILTY, on Count(s) No.: all counts DATE: 6/5/98
TIME: 11:55 a.m.
It was therefore adjudged by the Court that the defendant was guilty in manner and form as charged in said complaint/information on said counts.
Whereupon, the defendant on 6/10/98 duly filed his/her motion to set aside the verdict. The Court, Harleston, J., having heard the parties on said motion, denied the same on 8/20/98

NOT GUILTY, on Count(s) No.: ___ DATE: ___
TIME: ___
GUILTY, ON THE LESSER INCLUDED OFFENSE, on Count(s) No. ___

The Court accepted and ordered recorded said verdict.

The Trial Court Judge (Harleston) thereafter deferred the imposition of the sentence on the defendant and ordered that the Adult Probation Department file the required pre-sentence report on or before 8/21/98.

The pre-sentence report having been filed and considered, the Court (Harleston, J.) sentenced the defendant to:

PAY A FINE OF $___ on Count(s) No. ___, respectfully, and to stand committed until judgment be complied with.

BE COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF CORRECTIONS, on Count(s) No. all counts, see below for a term of ___ at _____

EXECUTION OF SAID SENTENCE WAS SUSPENDED, on Count(s) No. ___ after ___ day(s)/month(s)/year(s) are served on Count(s) No. ___ and the defendant was committed to the care of the Adult Probation Department for a period of ___ mths/yrs. on Count(s) No. ___

* SENTENCED ON COUNT #1 TO 5 YRS.E/S/A 18 MOS., 5 YRS PROBATION

SENTENCED ON COUNT #2 TO 1 YR.E/S 3 YRS PROBATION, CONC

SENTENCED ON COUNT #3 TO 1 YR E/S 3 YRS PROBATION, CONC.

FOR A TES OF 8 YRS E/S/A 18 MOS. TO SERVE. 5 YRS. PROBATION

_____

STATE OF CONNECTICUT
CRIMINAL JUDGMENT FILE

DOCKET NO.: CR97-106221	SUPERIOR COURT
STATE OF CONNECTICUT	J.D. OF HARTFORD
v.	AT G.A. 13, ENFIELD
Augustus Simmons (NAME OF DEFENDANT	September 11, 1998 (DATE)
446 Main Street East Hartford, CT (ADDRESS OF DEFENDANT)	

Upon the information and/or complaint of the Assistant State's Attorney for said Geographical Area court, the above-named defendant was presented before said court on 8/8/97 and charged with the crime(s) of:

COUNT	CRIME	STATUTE/ ORD. NUMBER
FIRST	Criminal Mischief 2nd.	53a-116
SECOND	Ill Tamper Airport/Equipment	15-69
THIRD		
FOURTH		

Said defendant was advised of his/her constitutional rights according to statute by the Hon. Ward, a Judge of the Superior Court, on 8/8/97.

ATTEST:
CLERK OF COURT: /s/ L. [Illegible] Asst. Clerk

It appearing that said defendant should have counsel, the Office of the Public Defender was appointed by the

Hon. _____ to represent the defendant and on _____ Public Defender _____ appeared for the defendant.

It appearing that said defendant was a minor, the following person was appointed Guardian ad Litem, by the Honorable _____, a Judge of the Superior Court.

NAME OF GUARDIAN: _____ of _____ (Town)

The defendant was called upon to answer said information/complaint on 8/8/97 and thereupon pleaded:

NOT GUILTY, to Count(s) No. one and two
GUILTY, to Count(s) No. _____
NOLO CONTENDERE, IN WRITING, to Count(s) No. ___

That before the defendant was put to plea on Count(s) No. one and two, (s)he was notified, in the absence of the Court, of the contents of a second part of the Information, charging said defendant with having been previously convicted of the crime(s) of: Cr. Mischief and Tamper with Airport/Equip. on: 3/10/98, at: Enfield, Superior Court.

Whereupon, the Court advised the defendant of his/her constitutional right to a trial by the Court or by the Jury. That the defendant thereupon elected to be tried by the Court on the count(s) to which (s)he had pleaded not guilty. After a full hearing before the Hon. _____, commencing on ___, and concluding on ___, the Court found the defendant:

GUILTY, on Count(s) No. _____
NOT GUILTY, on Count(s) No. _____
GUILTY, ON THE LESSER INCLUDED OFFENSE, on Count(s) No. ___

That the defendant elected to be tried by a Jury, on the count(s) to which (s)he had pleaded not guilty. The defendant elected to be tried by a jury of six and the case was continued onto the Firm Jury Trial List for this Geographical Area. After a full hearing before the Hon. Harleston, commencing on 4/15/98, the case was committed to the jury which returned a verdict of:

GUILTY, on Count(s) No.: *1 and 2 DATE: 6/5/98
TIME: 11:55 a.m.
It was therefore adjudged by the Court that the defendant was guilty in manner and form as charged in said complaint/information on said counts.
Whereupon, the defendant on 6/10/98 duly filed his/her motion to set aside the verdict. The Court, Harleston, J., having heard the parties on said motion, denied the same on 8/20/98

NOT GUILTY, on Count(s) No.: ___ DATE: ___
TIME: ___
GUILTY, ON THE LESSER INCLUDED OFFENSE, on Count(s) No. one
*Criminal Mischief in the 3rd. degree

The Court accepted and ordered recorded said verdict.

The Trial Court Judge (Harleston) thereafter deferred the imposition of the sentence on the defendant and ordered that the Adult Probation Department file the required pre-sentence report on or before 8/21/98.

The pre-sentence report having been filed and considered, the Court (Harleston, J.) sentenced the defendant to:

PAY A FINE OF $___ on Count(s) No. ___, respectfully, and to stand committed until judgment be complied with.

BE COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF CORRECTIONS, on Count(s) No. *1 and 2 for a term of one ct. #1 to 1 yr.e/s, 3 yrs prob. conc. on ct.2 to 8 yrs. e/s/a 18 mos. 5 yrs. prob.. conc. at H.C.C/Walker

EXECUTION OF SAID SENTENCE WAS SUSPENDED, on Count(s) No. two after 18 mos. day(s)/month(s)/year(s) are served on Count(s) No. ___ and the defendant was committed to the care of the Adult Probation Department for a period of 5 yrs. mths/yrs. on Count(s) No. two and three yrs. on count 1

APPENDIX D

58 Conn. App. MEMORANDUM DECISIONS 903

STATE OF CONNECTICUT *v.* AUGUSTUS J. SIMMONS
(AC 18814)

Lavery, C. J., and Landau and Zarella, Js.

Argued May 10 – officially released May 30, 2000

Defendant's appeal from the Superior Court in the judicial district of Hartford, geographical area number thirteen, *Harleston, J.*

Per Curiam. The judgment is affirmed.

APPENDIX E

SUPREME COURT
STATE OF CONNECTICUT

No. PSC-99-0381

State of Connecticut
v.
Augustus J. Simmons

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court (58 Conn. App. 903 [AC 18814]), it is hereby ordered that said petition be, and the same is hereby denied.

Borden, J. did not participate in the consideration or decision of this petition for certification

BY THE COURT,

/s/ Cynthia M. [Illegible]
ASSISTANT CLERK-APPELLATE

Dated: July 13, 2000
Notice sent: July 14, 2000
Clerk, Superior Court, Hartford at G.A. 13, CR97 104930
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
LaBelle, LaBelle, Naab & Horvath, P.C.
John A. East III, Assistant State's Attorney

Geoffrey Naab in support of petition; *John A. East III*, Assistant State's Attorney, in opposition.

[Reported at 254 Conn. 908]

APPENDIX F

PETITION FOR CERTIFICATION (HABEAS CORPUS)
JD-CR-84-A Rev. 8-02
C.G.S. 52-470, Pr. Bk. 80-1

STATE OF CONNECTICUT
SUPERIOR COURT [LOGO]
www.jud.state.ct.us

JUDICIAL DISTRICT OF	DATE OF DECISION	DOCKET NO.
Tolland at Rockville	October 7, 2002	CV01-3473
NAME OF PETITIONER	NAME OF RESPONDENT	
Augustus Simmons	John Malone, Esq.	
TO: *(fill in the name of the trial judge)*	Judge S. T. Fuger, Jr., J., who decided case or if said judge is unavailable to the judge of the Superior Court designated by the Chief Court Administrator to certify this matter.	

The petitioner requests a certification that a question is involved in the decision on my habeas corpus petition which ought to be reviewed by the Connecticut Appellate Court. The grounds upon which I request certification are:

☐ set forth in the Application for Waiver of Fees, Costs and Expenses and Appointment of Counsel on Appeal, which application (Form JD-CR-73) I am submitting with this petition.

☒ *(Specify grounds, attach additional sheets if necessary)* Question of "Lack of Jurisdiction", per P.B. 23-29(1) was a claim upon which relief could be granted. (See Attached).

NOTICE: This petition must be made within ten (10) days from the date of decision and sent to the clerk of the Superior Court for the Judicial District named above.

SIGNED
/s/ Augustus Simmons
10/11/02
(Petitioner)

(SEE REVERSE/PAGE 2 FOR CERTIFICATION)

[LOGO]

CERTIFICATION AND NOTICE

☐ It is hereby certified that a question is involved in the decision on the petition for habeas corpus which ought to be reviewed by the Appellate Court and the foregoing Petition for Certification is GRANTED.

☒ The foregoing Petition for Certification is hereby DENIED.

BY THE COURT *(Print or type name of Judge)*	ON *(Date)*
Stanley T. Fuger, Jr., J.	10/22/2002

SIGNED *(Judge, Asst. Clerk)*	DATE NOTICE ISSUED
(Fuger, Jr., J.)	10/22/2002

/s/ [Illegible]
Court Officer

NAME AND ADDRESS OF PETITIONER

TO: ⌜ ⌝

⌞ ⌟

CV-01-3473

ADDENDUM TO APPEAL PROCEDURE

A.) Per Practice Book Sec. 10-31 Grounds of *MOTION TO DISMISS*, the motion shall be used to assert:

(1) Lack of jurisdiction over the subject matter

(2) Lack of jurisdiction over the person

(3) Improper venue

(4) Insufficiency of process

(5) Insufficiency of service of process

Memorandum of law was filed with motion of September 25, 2002.

B.) Per P.B. Sec. 41-8 (4) Motion to Dismiss:

Absence of jurisdiction of the Court over the Defendant or the subject matter. This issue was not addressed -or- ruled on.

C.) Per P.B. Sec. 66-8 – Provides that a motion based on lack of jurisdiction may be filed at any time.

D.) This court was pleaded with under "BURDEN OF PROOF" of petitioner's motion to dismiss, dated September 25, 2002 – and orally on October 7, 2002 to:

ASSUME JURISDICTION TO DECIDE JURISDICTION UPON OWNER'S MOTION TO DISMISS.

/s/ Augustus Simmons
Augustus Simmons, Petitioner

APPENDIX G

CR03-0127450
97-0104930
97-0105048
97-0106221

SUPERIOR COURT
JUDICIAL DISTRICT
AT ENFIELD

STATE OF CONNECTICUT

APRIL 8, 2003

VS.

AUGUSTUS SIMMONS

MOTION TO DISMISS, (PACK THE BAGS – 2ND NOTICE) OF ALL CRIMINAL CHARGES PENDING AGAINST DEFENDANT WHEREIN PROSECUTION BY THE STATE – IN THE CONTEXT OF HAVING "PURCHASED" DEFENDANT'S REAL PROPERTIES WITH AN ORAL (VERBAL) OFFER IS GROUNDLESS AND WITHOUT MERIT.

MEMORANDUM OF LAW IN SUPPORT OF MOTION

SUBJECT MATTER JURISDICTION

Where this matter has been argued before the Court – by the State – claiming the Superior Court lacks subject matter jurisdiction before Hon. Dupont, A., on June 7, 1982, can be found in transcript of June 7, 1982, at Page 17 (Exhibit #1).

JURISDICTION OF THE PARTIES

That there was never any notice, service, or return of service to Superior Court; no MESNE process against any parties can be found in Exhibit #1 at Page 26 wherein Atty. Walter Bass informed the Court that – "I have never been served any citation nor have my clients ever been

served any kind of citation to give us any notice to determine priorities."

JURISDICTION OF AUGUSTUS SIMMONS/OWNER

From Exhibit #1, the State acknowledges, at Page 24, that: Mr. Simmons was not even made a party. Also, on same page, the Atty. General Assistant states, none of the parties apparently have been served. In support of such statement, a certified copy of the land records containing the citation at Vol. 59, pages 657-668 is submitted (Exhibit #2).

NO DOCKET NUMBER

On page 24 of Exhibit #1 is the acknowledgement: "Without having its own Docket Number, have never been defaulted out and their priorities have never been determined."

STIPULATED JUDGMENT

A court cannot accept a stipulated judgment where it lacks subject matter jurisdiction or where the stipulation violates public policy – or – a verbal offer, and, certainly under no circumstances should the case be decided without an opportunity for each party to present evidence. *Liberty Bank for Savings v. Armstrong*, (1980) 36 Conn. Supp. 629, 423 A2d 171. Quoting from *Liberty Bank*, supra, at p. 631, a judgment by stipulation is not a judicial determination of any litigated right but a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. *Bryan v. Reynolds*, 143 Conn. 456, 460, 123 A 2d 192 (1956).

Where there *is not, was not, could not* be any submissions to the Court of Competent Jurisdiction of the corrupt practices engaged in by discharged and withdrawn counsel (Rogin-Hirtle, Esquires), the oral (verbal) offer did not comport with the Statute of Frauds, and, the Owner never accepted, assigned, used or took any of the fraudulent offer, refused to tender any deeds, and the total and complete abstinence from permitting any hearings in damages in defiance of the legislative mandate (Special Act #170 (1969), #163875); in defiance of the congressional mandate (C.G.S. § 48-17a, b, c, (1971)) made it obvious the intent was "to defraud" and against public policy.

MANDATORY WRITTEN STATEMENTS

Both State Statutes and Federal Regulations mandate written statements of compensation – in lieu of VERBAL OFFERS.

Statutes providing that public entity may acquire property by eminent domain only if it first makes offer to Property Owner and provides him with written statement explaining why offer is just, establishes "mandatory" requirements which must be observed by any public entity planning to initiate eminent domain proceedings through resolution of necessity, *City of San Jose v. Great Oaks Water Co.*, 237 Cal. Rptr. 845 (Cal. App. 1 Dist. 1987).

STATUTE OF FRAUDS

An oral contract for the purchase of land is unenforceable under the Statute of Frauds. The wisdom of the Statute is a matter within the control of the Legislature, not the Judiciary. The Statute of Frauds was enacted to

prevent fraud, not to aid it, and should receive a reasonable interpretation with that end in view by the Connecticut Supreme Court.

The Statute of Frauds is not intended to change, and is not to be construed as changing, the general principle of the law of contracts which require a consideration to render a contract enforceable. The object and result of the Statute are merely to add an additional requirement, namely, that the contract or memorandum thereof be in writing; and is supported by consideration.

In the case of *Regan v. Kirk*, 140 Iowa, 302, 118 N.W. 317, 318 which was an action on a contract within the Statute of Frauds, wherein the Lower Court attempted to submit to the jury the question of an implied contract the Court said: "This is clearly erroneous. The fact that the Promisee relies on an unenforceable promise does not validate it. The contract itself must be such as is enforceable upon performance, evidence of an oral agreement to answer the debt of another is inadmissible under the Statute, regardless of whether it is acted on or not."

MESNE PROCESS

That there was – NEVER – any proceedings instituted before the Court of Competent Jurisdiction (Superior), since March 24, 1972 is acknowledged by the State at page 20 (Exhibit #1) of "NO MOTIONS" "NO PROCEEDINGS".

Where there was no action founded, initiated, or brought to the Trial Court, the denial of a day in court that is so basic and fundamental to real property acquisition – MANDATES – dismissal under the general jurisprudence of Connecticut Practice as found in the cite of *Russo v.*

Watertown, 184 Conn. 30, 33-34, 441 A 2d 56 AT 58 stating: "[i]t is in recognition and implementation of the basic principle that due process of law requires that the rights of no man shall be judicially determined without affording him a day in court and an opportunity to be heard." *Benz v. Walker*, 154 Conn. 74, 77, 221 A 2d 841 (1966).[1]

DEED OR CONDEMNATION

Acquisition of the subject property can only be acquired by deed or condemnation and where after two futile condemnation attempts, the State reverted ownership back to the original Owner on March 24, 1972, no further attempts at condemnation have been attempted, the corrupt Rogin-Hirtle Law Firm and their unconstitutional, fraudulent verbal offer was told to take a long walk on a short pier, there was no tendering of deeds on April 19, 1978 (Exhibit #3), and, having previously been discharged on December 23, 1977, a withdrawal (Exhibit #4) was submitted on April 19, 1978 ending all authority, right, jurisdiction, and the subsequent filing of encumbrances on June 2nd and 5th of 1978 was outright FRAUD to perpetuate a withdrawal of in excess of $113,000.00 from the

[1] Footnote, – we have stated: "It is the settled rule of this jurisdiction, if indeed it may not be safely called an established general jurisprudence that no court will proceed to the adjudication of a matter involving conflicting rights and interests until all persons directly concerned in the event have been actually or constructively notified of the pendency of the proceeding, and given reasonable opportunity to appear and be heard, this firmly fixed limitation, which, in effect if not technically in all cases is a jurisdictional one, is as binding in English practice as it is with us." (Citations Omitted).

rejected fraudulent verbal fund, WITHOUT ACQUIRING ANY RIGHTS TO THE PROPERTIES.

RETURN OF FUNDS

Where it is crystal clear there is no proceedings before the Court, before – during – or after the appearance of Rogin-Hirtle from December 13, 1977 to April 19, 1978; no notices, no hearings, no service of process, no valuations, no returns of service to Superior Court, and, the Court cannot make any disbursements without any MESNE process before the Court (See 80 Conn. 599), the Court was forced to return the fraudulent "slush-fund" back to the Treasury on December 23, 1991 (Exhibit #5).

C.G.S. § 48-21

Where the Statute § 48-21 makes abundantly clear that all lien holders must be paid – FIRST – and the lien of Atty. Tom Byrne dating back to 1974, in addition to several others, remain on the land records, illuminates the fact that the Owner has not, cannot receive any just compensation for this forty (40) year fiasco and the "police power" tactics must yield to constitutional claims.

C.G.S. § 8-129

Whether by PURCHASE, LEASE, EXCHANGE, or GIFT, or in exercising its right of EMINENT DOMAIN, C.G.S. § 8-129 is the applicable procedural Statute detailing:

#1. Filing of Statement of Compensation in office of Town Clerk.

#2. Give notice to each person appearing of record as holder of any mortgage, lien assessment, or other encumbrance.

#3. Return of service to Clerk – Clerk to issue certificate for Town Clerk.

#4. Not less than 12 days nor more than 90 days after such notice and such Statement of Compensation, shall file such notice and such STATEMENT OF COMPENSATION.

CONNECTICUT JURISPRUDENCE

The discharged and withdrawn (Rogin-Hirtle) cannot render any valid judgments for any Simmons' properties unless: "Both the subject matter and the parties must be before the Court, and jurisdiction of one without the other will not suffice, the two must concur or the judgment will be void in any case in which the Court assumes to act." "It is an acknowledged principle . . . of every court in the world that not only the decisions, but everything done under the judicial process of a Court, not having jurisdiction, are IPSO FACTO VOID." *Broca v. Broaca*, 181 Conn. 463, 468, 45 A 2d 1016 (1980); *Clover v. Urban*, 108 Conn. 13, 17-18, 142 A 389 (1928). Since there was no actual service of process, any claimed, coerced judgment was "extra-judicial and void." See *Case v. Humphrey*, 6 Conn. at 139.

{Following attachment and service on the Defendant, the writ, properly endorsed to show the property attached, must be returned to court, as in the case of any process, failure to make return, or failure to make proper endorsement on (the writ makes the attachment invalid and the

officer – TRESPASSER AB INITIO. *Williams v. Ives*, 25 Conn. 568 (1857); *Chapel High v. Cavallaro*, 141 Conn. 407 (1954).}

Vol. 59, p. 657-668, (Exhibit #2), that is listed as a "Supplemental Judgment" from the withdrawn Kangaroo Court of Rogin-Hirtle, who had the audacity, gall, to have the Superior Court Clerk (Thomas Abraham) put the Superior Court Stamp on the papers was *OUTRIGHT BRAZEN FRAUD* on June 5, 1978.

WHAT A DIFFERENCE A YEAR, AND, A DIFFERENT CLERK MAKE. On September 12, 1979, Hon. John Daly, on receiving the cite *Shelton v. Wolthausen*, 80 c 599, in addition to the statement from Chief Clerk Lucian Jachamovitz that there were no proceedings before the Superior Court, *DENIED* any withdrawal from the fraudulent slush fund (Exhibit #6 and 6a). The United States Supreme Court ruled against the above type of shenanigans in *Standard Oil v. Missouri*, Vol. 32 AT p. 409. *TRESPASSER CANNOT DICTATE TO THE OWNER.*

Kangaroo Court could not render any valid judgments until service is made on all interested and necessary parties, since it is service of process, not the attachment which tolls the Statute. *Young v. Margiotta*, 13 Conn. 429, 433, 71 A 2d 924 (1950).

Could not render any valid judgments where process must be served the requisite number of days before return day. *Brandriff v. Sellas*, 40 Conn. Supp. 243 (1985).

Could not render any valid judgments where an improper return day – (first Tuesday of July 1978) affects the courts jurisdiction. *Hartford Nat. B. & T. v. Tucker*,

178 Conn. 472, 423 A 2d 141 (1979) Cert. denied 445 U.S. 904, 100 S. CT 1079, 63 L. Ed 2d 319 (1980).

Could not render any valid judgments binding the property of Petitioner unless a means reasonably calculated to give notice to the parties has been employed. *Mullane v. Central Hanover B. & T. Co.*, 339 US 306, 94 L. Ed 865, 70 S. CT. 652 (1950).

Could not render a valid judgment where compliance with the Statues under Connecticut Law is not to be "Disregarded with impunity, nor waived or changed by the Courts." *Carter v. Carter*, 147 Conn. 238, 242, 152 A 2d 173 (1960).

Could not render a valid judgment where, after discharge and withdrawal, had no authority, right, jurisdiction to act [in any capacity], the Owner was intentionally, maliciously, with deliberate malevolence, "excluded" from the transmogrified citation on the land records at Vol. 59, p. 661-662 of Town of East Granby.

FULL AND FAIR OPPORTUNITY TO LITIGATE

That the Owner was not provided the full and fair opportunity to litigate – a day in court – that is a prerequisite to any judgment is further illustrated with the "DISSOLUTION OF ATTACHEMENTS" pursuant to C.G. S. § 52-327 filed on the East Granby land records on December 2, 1996 at Vol. 112, p. 001 (Exhibit #7) that has reference to an outstanding lien (mortgage) dated July 3, 1974, in addition to several others blows the "PURCHASE" theory – OUT OF THE WATER. Federal Regulations require TITLE free of liens and encumbrances.

EXPOSE

Subsequent arrests involving the same subject real property allows Defendant/Owner to – REVISIT – the original prosecution where fraud, perjury, deception, distortion, violation of Constitutional rights, exclusion of evidence was resorted to with the illegal, arbitrary, unconstitutional seizures in violation of the fourth, fifth, sixth, and fourteenth amendments to keep the Owner "in custody in violation of the Constitution."

Respectfully submitted,

/s/ Augustus Simmons
Augustus Simmons

ORDER

The foregoing motion to dismiss, (pack the bags – 2nd notice) of all criminal charges, having been considered by the Court, it is ordered

_____ / _____
GRANTED DENIED

_____
By the Court

/s/ Augustus Simmons
Augustus Simmons

EXHIBIT #1

SUPERIOR COURT
JUDICIAL DISTRICT OF HARTFORD/NEW BRITAIN
AT HARTFORD

AUGUSTUS J. SIMMONS,	:	
Plaintiff,	:	NO. 163875
	:	June 7, 1982
vs.	:	
HORACE B. WETHERALL,	:	
Defendant.	:	

Before:

The Honorable ANTOINETTE L. DUPONT, Judge

Appearances:

For the Plaintiff:

AUGUSTUS J. SIMMONS, Pro Se

For Allair and Valenti:

WALTER E. BASS, JR., ESQ.

VICTOR FEINGOLD, ESQ.

Assistant Attorney General

Harold J. Moan, Sr.
Court Reporter

[2] THE COURT: I have in front of me various motions. Well, one is a motion for disbursement of funds by the clerk. All of these motions relate to the case of Augustus Simmons versus Howard Wetherall, Et Al, Case Number 163875.

The first motion for disbursement of funds by the clerk is on behalf of Patsy Valenti. The second motion is on behalf of Leonard Allair.

Now, I also have an appearance from Walter Bass, who is present today, and Augustus Simmons who is also present as well as Victor Feingold, who is the Assistant Attorney General. I have affidavits of Augustus Simmons which are part of the file.

MR. BASS: Your Honor, I have a very short request of the Court. I represent both Mr. Allair and Mr. Valenti. They are relations to Mr. Simmons and –

THE COURT: I have an appearance for Mr. Valenti.

MR. BASS: There should be two, but I will submit another appearance for him.

THE COURT: Maybe the clerk has it. I don't.

MR. BASS: Their relationship to Mr. Simmons is that they are former brother and sister-[3]in-laws to Mr. Simmons. The money that is being claimed this morning, your Honor, was money that the Valentis and Allairs have lent Mr. Simmons over a period of time to finance or help finance his legal battles.

Mr. Simmons was never able to pay on any of these notes that he signed with the Valentis or Allairs, and subsequently they came to my office and we started a collection suit against Mr. Simmons and received judgment and recorded this on the land records going back to 1977-1978.

THE COURT: That was brought in this court?

MR. BASS: Yes, your Honor. Well, two suits. They were both brought within the Hartford County Superior Court.

THE COURT: All right. Both of them went to judgment?

MR. BASS: Yes, and both are recorded on the land records.

THE COURT: There is a judgment lien on the land records?

MR. BASS: Yes, your Honor. Well, one judgment lien in 1977 and one in 1978.

THE COURT: Judgments were in the amount [4] of $3,000?

MR. BASS: No, your Honor. The figure of 3,000 for Mr. Valenti and 13,000 for Mr. Allair includes all interest to date, actually June 24th, 1982, your Honor. It is a total figure and we didn't break it down. We gave a lump sum figure by computation.

THE COURT: That includes interest up to June 24th?

MR. BASS: Yes.

THE COURT: January 4th, '78?

MR. BASS: June 24, 1982, right to this moment.

THE COURT: But from January 4th, '78 to date?

MR. BASS: Yes.

It is our contention that when a state agency condemns anybody's property, that they do deposit money to the clerk, and there has been money deposited to the clerk, according to Section 48-11 of the General Statutes. This money is Mr. Simmons' and is being held through the clerk of the court to make sure that he has the funds for the property that was taken. During the history of this action and since it was deposited with the clerk, there have been several withdrawals, as your Honor may be familiar with. Well, approximately $98,000 [5] was withdrawn from this account for the law firm of Nassau, Rogin & Hirtle, and I forgot the complete name of all the lawyers in there, but for legal representation to Mr. Simmons. There was money set aside for Mr. Simmons' ex-wife, your Honor, and I believe that amount was approximately forty-some-odd thousand dollars. The taxes due the Town of East Granby were also escrowed out of this fund and distributed to the town, as well as money to Mr. Diamond.

In this situation, your Honor, I believe that with Mr. Simmons' consent to have this money withdrawn from his account to pay these people, is a logical consistent act that has been followed through in this file already, your Honor, on three other occasions. We do have Mr. Simmons' consent, and I would ask your Honor, if you determine it so, to withdraw the money to allow us to make this application, that is to withdraw the money. We ask your Honor to grant it.

THE COURT: Would you like to say anything, Mr. Simmons?

MR. SIMMONS: Yes, your Honor. I would ask that somewhere, at some point, that Mr. Bass would submit to me, to the Court, a specific amount or segregate

the amounts of interest versus principal, and the question being a logical one, because somewhere the [6] Internal Revenue will want to catch up with me and say how much was principal and how much was interest. I do feel that I told Mr. Bass, I don't care what the numbers are or how he arrived at them, but I do feel from my point of view and for my protection, I must have a breakdown. Well, however he arrived at it, I don't care. I am not objecting to the total numbers, but what I am asking for is a separation.

MR. BASS: If I may, your Honor, if the motion is granted, we will provide Mr. Simmons with a complete breakdown.

MR. SIMMONS: He mentioned $198,000, and as your Honor knows, there was 113,000 paid out to the legal firm, just what the records will show. Well, $15,000 additional, which is the figure that was granted. As long as he had mentioned that, I am still waiting on the courts. I know you are stuck with a tacky situation, but I do feel that considerable time has elapsed, and I think that your Honor should bring the gavel down.

THE COURT: Many of the motions I have heard are really interrelated and they address the same kind of question. Hopefully, this will be the last motion and now I can decide the many motions which I have heard so far.

MR. SIMMONS: Yes. Mr. Bass also mentioned [7] $40,000. Well, I can't let the opportunity go without commenting that I had an opportunity to talk with Mr. Shearenberger, who is with the Hartford National, and it is really a travesty to leave this amount of money in at 5-1/2 percent in a passbook account.

THE COURT: The $40,000?

MR. SIMMONS: Yes.

THE COURT: You agreed to that.

MR. SIMMONS: I agreed, but I still think – I mean, it is sitting there and losing an awful lot. I am quoting Mr. Shearenberger, that it could be invested on a daily basis in a market fund and getting more than twice the interest at 5-1/2 percent. Now, whether the adversary is losing it or I am losing it, there are a lot of dollars being lost here unnecessarily. Your Honor, again I suppose I got to choose my words on how I address this problem, but it was mentioned that it is just a travesty that this is sitting there at 5-1/2 percent.

He also mentioned taxes and Mr. Diamond. Well, taxes is another problem down the line which has to be resolved. Your Honor, this is exactly one of the reasons why this ball of wax is unsettled. As long as I am alive, and as long as I got red blood corpuscles through my veins, I am never in my lifetime going to [8] permit any judge to award and make me pay taxes on land that I own. I have been foreclosed for years and in my humble estimation, this is ludicrous. Both the state statute and federal public policy is very clear on it, and still to have it, I say no. This is why it makes it difficult for your Honor. Mr. Feingold is here listening and he knows it is wrong. He tried to put words into Judge Corrigan's mouth, but to no avail. So, therefore, there is something to be settled.

THE COURT: What did Judge Corrigan handle?

MR. SIMMONS: The taxes.

THE COURT: East Granby?

MR. SIMMONS: There were three different judges involved. Well, first Tambora and then Brennan and the taxes was Judge Corrigan and now it is Judge Dupont.

Getting back to Diamond, this is another dilly, if I may use that word. In my way of reasoning, I feel that the Court has overpaid Diamond based on the information I submitted to the Court last week. I was not in a position this past week to do anything because much to my surprise, I gave your Honor my copy of the affidavit of debt, thinking that I had an additional one or two, which I usually make, and when I went through [9] my file, I could not find a copy of that affidavit.

THE COURT: Is this one of the ones you submitted as an exhibit?

MR. SIMMONS: Yes. Exhibit A.

THE COURT: The clerk would have it.

MR. SIMMONS: I asked Frank, and he said no, Miss Dupont has the file at home.

THE COURT: I think he has the exhibits. I do have the file.

MR. SIMMONS: All right. Well, if he has the exhibit, I will get that. I need that.

THE COURT: I am sure if you see him, he can get a copy made.

MR. SIMMONS: Fine. Well, my position has not changed. I feel enough time has elapsed on both the Rogin matter and the Diamond matter, where we are going into the third month, and I have been pursuing this well over

six or seven months officially, since I sent him the letter asking for removal of the lien. I filed the motions to compel and I am still waiting.

My overall position, your Honor, as far as the funds are concerned, which Mr. Bass is referring to, is that no matter how this thing goes, no matter where it ends up, all the monies that are there presently are still going to end up with Mr. Simmons even if I [10] lose. However, if I prevail with all of the measures that are before the Court presently, then I think Mr. Feingold will have to turn Bradley Field over to Mr. Simmons.

What I am saying to the Court at this point, the Court cannot be jeopardized by making any award either to Mr. Bass, the $40,000, or the monies that have been paid out, if it is an obligation that I have and that I owe, fine. I objected strenuously to the taxes. I felt they should not have been paid. I objected very vigorously against the payment to the attorneys, and still it was paid. Well, maybe it is a lawsuit down the road, I don't know, but the monies came out of the fund over my objection, and they should not have been paid. I am not objecting to this because I owe it. The monies are there and I feel it should be paid. Why should these people be left hanging and these people are getting old and I recognize that. Well, senior citizens and who knows how much longer they will live. They would like to get a few dollars back and I am fully in accord. I just feel that when I am in accord, and it is my monies, that the Court is not jeopardized by making a favorable decision.

THE COURT: Mr. Feingold.

MR. BASS: Before Mr. Feingold starts, [11] may I be allowed to ask him two questions?

You have no objection to the disbursement of this money to Mr. Allair and Mr. Valenti?

MR. SIMMONS: I have no objection whatsoever. Well, I just forgot to make one note, your Honor. I did ask Mr. Bass in accordance with what your Honor has done, that he put a date of June 24th, on or before June 24th, and the reason being that these monies are down there at Hartford National and the turnover date is June 24th. This is the reason I asked and the reason for the date there. Now, keeping in mind, even if these monies were paid out tomorrow, the amount of loss that would occur in relation to the amount of loss for the period of time, that $330,000 was sitting for eight months with no interest, which was in the neighborhood of between thirty-five and $40,000 that went down the drain with no interest, all because of somebody's bullheadedness. Well, when you get two forces who wouldn't move, and I wouldn't until the Federal judge said why can't they be an interest-bearing accounts, of course, Mr. Feingold had to move. June 24th was at my suggestion, and I think that your Honor would be in accord with that date. I don't think it would matter to him whether he gets it tomorrow or June 24th. I am fully in accord.

[12] MR. BASS: Thank you.

THE COURT: Mr. Feingold.

MR. FEINGOLD: Your Honor, I am Victor Feingold, Assistant Attorney General. I have appeared before your Honor on other motions and in the past I have resisted any further order of the Court which would direct the payment of any monies now in the custody of the Court. I again object to any order of the Court which would direct the clerk to disburse any of the funds now on

deposit in the Court. My reasons for the taking of this position are now being set forth by me today before your Honor. I am now going to introduce a new element, which might affect the decision of your Honor, and that is the jurisdiction of your Honor to act on the motion of Mr. Allair and Mr. Valenti, who are seeking each independently an order for disbursements of funds.

Now, the first point I want to make is that the basis for the deposit itself is found in a practice or procedure new to this state and not known to our practice. The office of the Attorney General was confused with how to effect compliance with this stipulated judgment. The Supreme Court of the State of Connecticut in Simmons against Wetherall, and in that case the spelling in the recorded opinion was [13] W-e-t-h-e-r-e-l-l, which is a mistake. Well, it arises out of the case of Simmons against Wetherall, which your Honor recited at the opening of this hearing.

In the Supreme Court opinion, at 180 Conn. 587, the case of Simmons against Wetherall, as reported by the opinion, referred to an appeal by the plaintiff, Augustus J. Simmons, from the denial of a motion to open a judgment. The judgment was recited in the opinion of the Supreme Court as a judgment on stipulation. At page 588 of 180 Conn., the Supreme Court commented on the nature of the case and some of the background, and indicated after extensive litigation, all cases were consolidated. The Supreme Court referred, particularly to a number of pending state cases and the examination of the records and briefs of the Supreme Court opinion will also show that there was pending some federal cases in the United States District Court for the District of Connecticut. The Supreme Court then stated that the parties negotiated a settlement of all cases. I now quote, wherein the plaintiff

agreed to sell the land to the State for an agreed-upon price. Our reading of the stipulation and the judgment which purportedly conformed to the stipulation, does result in an uncareful analysis to a simple agreement to sell land for a price certain. Now, thereafter, no action was brought to even enforce [14] this agreement. If the stipulated judgment is viewed, as I claim it must, as an executory contract for the sale of real estate, the statute of limitations have passed and the State of Connecticut is barred from enforcing the agreement by specific performance. Well, I believe the statute is 47-33A. When I discovered in my view that specific performance of an agreement to sell real estate is unenforceable, then all proceedings in accordance with the order of Judge Shapiro regarding the removal of encumbrances that followed this stipulated judgment, are null and void and cannot properly be even considered. The State can never obtain voluntarily a deed from Mr. Simmons which was contemplated by the parties. The State as ready, able and willing, as the record will show, to pay the agreed-upon price. Mr. Simmons has resisted furnishing the State with an executed deed. Furthermore, Mr. Simmons has made every effort to resist the proceedings in the State court which gives rise to the stipulated judgment. Well, the stipulation and the agreement by bringing an action in the United States District Court attacking the validity of the State court judge.

Now, I have previously furnished to your Honor, a certified copy of the complaint from Mr. Simmons pending in the United States District Court. This [15] morning Attorney Bass is present on his motion, and I do not know if he has actual or constructive knowledge of the fact that there is pending in the United States District Court, a very important civil action, in part a civil rights action,

which if tried to conclusion could very well result in a judgment for Mr. Simmons that the State court proceedings violated his rights. I am speaking of the State court proceedings that led to the judgment on stipulation. Now, using that as a piece of evidence, I cannot, in good conscience, ever or anticipate that Mr. Simmons would ever deliver to the State a deed of the specific land within the stipulation for the agreed-upon price. If he will not deliver the deed, and there is no deed of Mr. Simmons in the custody of the court for delivery to the State, as there is money on deposit, then I cannot see why the State funds should be used to start paying his obligation and his bills, because that is all this thing amounts to. Well, to use this money to pay his bills where Mr. Simmons, himself, resisted it, quid pro quo, and has no intentions of ever delivering a deed to the State for the agreed-upon price.

Now, since this judgment on stipulation is defined by me, and I believe as a matter of law must be defined as an executory agreement for the sale of the [16] land on an agreed-upon price, and unenforceable because of the statute of limitations, the Superior Court cannot entertain an action or specific performance on behalf of the State. Well, the entire matter must be left for further proceedings in an effort to adjust the differences of the parties. The action for the judgment on stipulation cannot be characterized as an equitable claim. It is in no way a condemnation matter brought under any procedures of the State of Connecticut to condemn land for airport purposes or any other purposes.

THE COURT: Excuse me.

(There was a discussion off the record.)

MR. FEINGOLD: I was arguing now that in no way any of the proceedings that gave rise – none of the proceedings following the judgment on stipulation were undertaken in accordance with any of the provisions of 48-11. Now, 48-11 is a statute specifically applicable to proceedings in imminent domain, whether it is by state agency or the State of Connecticut or any municipality or any condemnor who has the power of imminent domain. So, 48-11, which gives the Court jurisdiction of monies on deposit, and also upon application to disbursement of funds on a hearing, in no way applies to any of the proceedings in the case of Simmons against Wetherall and related cases. It is true [17] that some of the consolidated cases did involve efforts by the State to exercise imminent domain powers for purposes of acquisition of land of Mr. Simmons' for airport purposes. Those efforts were aborted and failed as prior decisions of the Supreme Court will show. So, the funds that are now on deposit do not relate to those earlier cases. In fact, any funds that were on deposit in those cases have since been either paid out or returned to the State treasury. So, as a point of law in this matter, Mr. Bass in no way as he claims to seek disbursements of funds, relied on 48-11.

Now, I am going to the question of another matter that Judge Shapiro seems to assume that he had the power to exercise authority when he entertained a motion of Assistant Attorney General McQueeney for execution of the judgment.

I now direct your Honor, and invite your Honor's attention to another element of jurisdiction in the entire matter of Simmons against Wetherall. I might say that whenever I call your Honor's attention to the question of

jurisdiction, in accordance with the law of the State, if lack of jurisdiction is brought to your Honor's attention, I mean subject matter jurisdiction, no matter in what form or in what way, your Honor cannot proceed on any of the proceedings until you [18] resolve the issue of subject matter jurisdiction. If per chance the jurisdiction question is interwoven now with many other prior motions that have not been acted upon, and it has happened, that it arises on the motions of a claimed predictor of Mr. Simmons, it does not matter so long as this Court, the question of jurisdiction is called to your Honor's attention. The second point on lack of jurisdiction that I call your Honor's attention to, is that when Assistant Attorney General McQueeney came in with a motion for execution of an unsatisfied judgment, a concern of the State Referee, Judge Shapiro, was how to execute it. The judgment was not for money damages. As I recited before, the judgment on stipulation –

MR. SIMMONS: What was that? Would you please repeat that?

MR. FEINGOLD: The judgment was not for the payment of money damages insofar as the State was concerned. It was in favor of Mr. Simmons for the payment of an agreed-upon price for the sale of land. I do not believe that this judgment resulted in the payment of money damages. Consequently, Mr. Simmons could not get execution against the State, nor could the State get execution in the normal way that executions are given under the statute for judgment. So, Judge Shapiro heard [19] the stalemate that arose here, and Mr. Simmons stated he was ready, willing and able and agreed to pay the agreed-upon price and refusing to execute and deliver a deed to the State. So, the Honorable Louis Shapiro, State Referee,

acting under whatever he believed his statutory powers were as a State Referee, with all the powers of a judge of the Superior Court, undertakes to declare by court order, that title to the land is automatically vested in the State of Connecticut in accordance with the judgment. I refer your Honor to paragraph one of an order of Judge Shapiro, that is found in the case that your Honor recited by docket number in the Superior Court, Simmons versus Wetherall, and also found on page 37 of the Supreme Court records and briefs relating to 180 Conn. at 587. Paragraph one of what purports to be an order of Judge Shapiro contained in four numbered paragraphs recite prior – paragraph one there is a recitation of a number of matters apparently furnished Judge Shapiro from the Land Records in East Granby under the name of Augustus J. Simmons. Now, included in the list of matters was the mortgage and agreement of Mr. Diamond, a mortgage of Thomas P. Byrne, a lis pendence of Leonidas Simmons, a judgment of CBT, an attachment of Hartford National Bank, a judgment of the applicant today, Leonard Allair, [20] Et Al, an attachment of what purports to be an application of the applicant today, Valenti, a lease to Angelo Roncari and judgment, lien registration of the applicant today, Patsy Valenti, Et Al, and a lis pendence of Patsy Valenti, Et Al, another lis pendence of Leonard Allair, Et Al. Well, in addition, a lease seemingly recorded on March 16, 1978 to Westfield Vallet Parking, Incorporated, and an attachment of David B. Salzman. It appears that in view of all of these matters called to Judge Shapiro's attention, what the state of the title was, Judge Shapiro undertook without any motions before him, and without any proceedings, to enter an order other than the appearance of Mr. Simmons and the State, directing that all encumbrances be removed and that title to the premises described in

Exhibit A attached hereto, together with convenance described in Exhibit B attached hereto, against the land described in said Exhibit B is and are vested in the State of Connecticut in accordance with the judgment entered herein.

In no way do I understand that the terms of the judgment on stipulation empower any court to summarily invest title in the State of Connecticut. I take the position that Judge Shapiro had no statutory or any other authority, either as a State Referee, Judge [21] of the Superior Court or acting as a Judge of the Superior Court, to pass title in this case to the State of Connecticut. It would appear that Judge Shapiro believed he had that power, and in doing so believed that he could now execute in his fashion as a judge, that he had previously entered in accordance with the stipulation. There is nothing in the terms of the stipulation, as I read it, that even obligated Mr. Simmons to execute a deed. Therefore, I come back to what I mentioned before. It is simply an executory agreement for the sale of real estate. Imperfect as it is, and maybe it didn't really accomplish what the parties intended it to do, it now has developed an unenforceable thing in my view. It may very well be that all of the cases that were supposed to have been consolidated and settled in the Superior Court, are not truly settled, and that all cases go back to the status quo they were in including the United States District Court pending cases that Mr. Simmons still will have to litigate in the Supreme Court, his title to the Bradley Field. He still will have to litigate his claim for money damages that was given to him by the Special Act of this Legislature where various defenses have been asserted. We are back with Mr. Simmons battling now in the Superior Court. Well, that is the turn

of the screw on this type [22] of case, because I cannot see the way the proceedings have gone at this stage that this judgment can properly be enforced by either party.

Now, another matter was the fact paragraph two, where Judge Shapiro directed the State pay to the clerk these funds. Now, this is a burden on the clerk and that is nowhere statutory and no proceedings to my knowledge that can place a burden on the clerk of the Superior Court to take money under an executory agreement for the sale of land, even if the State was one of the parties to the agreement. There is no jurisdiction for him to even hold this. As far as item three, that Mr. Simmons vigorously resisted, it was an order that the clerk pay to the tax collector of Granby. Well, paragraph three, and quoting, that the clerk of said court pay to the tax collector for the Town of East Granby the sum of $8,761.29 together with accrued interest, lien in releases from the sum deposited. This order was without due process and there was no notification to the tax collector or the clerk, and there was no notification to Mr. Simmons that such an order would be entered. There was no opportunity for the parties to appear in open court and agree or to present evidence on the nature of this order. The validity of this proceeding thereafter were had in accordance [23] with this order that Mr. Simmons vigorously opposed and Judge Corrigan ruled he must follow the directions of the Superior Court acting through Judge Shapiro.

I submit again, as I believe I did to Judge Corrigan, that if Judge Shapiro had no jurisdiction of the subject matter in the first instance, then his order directing the clerk to release monies and to pay what purportedly was tax bills against the list in the name of Mr. Simmons, that it was illegal, null and void, and Mr. Simmons could very

well be right in that the payment of that money was not justified.

Coming to paragraph four –

THE COURT: I believe you have made these before, Mr. Feingold. I wonder if you could maybe address yourself to your objection to this motion or these two motions, which are for disbursements.

MR. FEINGOLD: Yes. Coming to that last one, the order that would bring anybody into this court, if these orders had any validity, was found in paragraph four of Judge Shapiro's order, where he stated that pursuant to Section 52-484 and/or Section 47-31 of the General Statutes, as the Court may deem applicable, the parties, encumbrancers and lienors described herein, be and are cited to appear before the Court with proof of the amount and validity of their [24] liens or encumbrances, that the clerk make payment to said parties in accordance with the equities in said balance as determined by further order of the Court and that the balance thereafter, if any, be paid to the plaintiff.

Now, while the citation that was issued by the Assistant Attorney General was made and was supposed to have been certified by a deputy sheriff, and Mr. Simmons was not even named as a party in that proceeding, the citation itself does not have any of the allegations necessary to invoke the jurisdiction of this Court under Section 52-44, which is an action to acquire title, nor does that citation have any of the elements necessary to invoke the jurisdiction of this Court under Section 47-31, which is an action of interpleader, and none of the parties apparently have been served, according to the sheriff's return. Well, upon examination of the citation, which is now on file in

the Superior Court, and somewhere in this Simmons against Wetherall, Superior Court case, without having its own docket number, have never been defaulted out and their priorities and their equities have never been determined. This simple effort by a motion of both of these named creditors to seek a disbursement of funds, it doesn't follow any of the requirements for an action, title or interpleader, it [25] must fail. It doesn't address itself properly to enable the Court to even determine the amount and validity of the claim. In addition, the proof would be required more than a motion practice and, at least, there should have been testimony, if not the parties, then a certified copy of the land records indicating indeed that a judgment lien exists on the land records, which is entitled to a priority and also testimony regarding what aspects or what amount of the judgment lien, if any, has been satisfied should be required. In addition, the question of whether interest accrues on the judgment lien and also it has to be claimed and made certain, because the Legislature in enacting the statute on execution on judgment altered the rate of interest, which previous to October 1, 1979 was six percent, and effective October 1, 1979, it became eight percent. If statutory interest is due on the judgment lien, that must be made known. Well, whether the judgment is based on notes or a higher rate of interest, that survives the judgment, and to be paid until it is fully satisfied, we have no way of knowing. Since there is no proof at all of the amount and validity of the claim, without even testimony or certified copies of records, I do not see how you can proceed, even if your Honor should overrule the prior claims that I have made. That is all.

[26] THE COURT: Thank you.

MR. BASS: A very short rebuttal, your Honor.

First of all, I would object to Mr. Feingold at this time questioning the jurisdiction of the Court to hear this case. Secondly, your Honor, in Mr. Feingold's recitation that he gave your Honor this morning, I forget which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the Court that in the citation, my two clients were listed under the care of my office. I will state to the Court that I have never been served any citation nor has my client ever been served with any kind of a citation to give us any notice to come in to determine what our priorities are in this matter. Secondly, perhaps Section 48-11 is not applicable. I would request that the Court – excuse me. I will withdraw that.

The reason why we may reference to this statute, because it is the only way that the clerk's office could handle disbursements and through their advice on how to try to present a motion for disbursement of these monies, and that is why we made reference to it. My feeling is that this case is a very old case [27] and it has seen many, many motions and actions. There seems to be a substantial problem with the State's end of this case. Now, whether the problems are due to Mr. Simmons or the State, I don't know, your Honor. I have two people that are looking for money that are entitled to money, and there are funds available. I would ask your Honor to weigh all the equities. The Court has a responsibility to all the people and not just the State. If the State has gone over any statute of limitation for any action they may have, that is not a concern of this Court. If the Court has jurisdiction and if all parties submit themselves to the

jurisdiction of the Court, I do not feel jurisdiction is a problem at this time.

I would like the Court to realize my clients as well as myself, pursuant to whatever paragraph it was in Judge Shapiro's decision, that Mr. Feingold referred, were never cited and never served. We had no knowledge of this.

THE COURT: I think I have enough understanding of it. Did you want to say something further?

MR. SIMMONS: I should cap it off, I think, your Honor. I find myself in a very difficult position to follow Mr. Feingold's remarks, because he was vacilating all the way from left field to center [28] field to right field to home plate. I sort of feel like I have been led out to the woods somewhere and left there. First he said that they don't have any authority and they don't have any jurisdiction, and then he turns around and in the next breath they are entitled – automatically vested to the State. What I want to have your Honor look at is – well, there are so many statutes and so many motions and everything that has been thrown out here and what is happening, I think, Mr. Bass put it correctly, the State has gone out in high water and found itself in the middle of the stream and found itself in trouble. It says maybe we should back up and turn around and try to reach shore again. Their records show, your Honor, there is no denial by anybody that the State has been there for over 20 years. They have not put any monies up for the use of this land for over 20 years and they are still there. The liability is accumulating. As I said in my opening remarks, not only is the money there, but if they are wrong, if they have not defended themselves, there is a hell of a lot more at stake. Well, your Honor would not put yourself in jeopardy by making a decision to

favor these people and let them have their money. He said the State funds should not be used to pay the bills. Well, before they put foot on that [29] property, your Honor, they are supposed to put money up first before that. Here we are 20 years later and how much money there is. He is trying to say we are here and we are staying there and there is no money and your Honor doesn't have the jurisdiction to dispose of any of this money. How ludicrous can this be?

Now, I am preparing a brief for the Supreme Court over a very minimal $8,000, because I was denied a condemnation in '68. I want to read this for the record and into the record. In addition to reasonable and necessary expenses and disbursements due the owner, the obligation becomes more apparent and obviously where the condemnor cannot restore to the owner in an as-before and reestablish the status quo position, such as cutting of trees, bulldozing terrain, obtaining legal injunctions against the owner from enjoying the use of real property for profit, removal of thousands of dollars worth of material without payment, without owner's permission, being ordered by the court to pay taxes on property which the owner was denied access borders on the ludicrous.

THE COURT: Is that an appeal you are taking?

MR. SIMMONS: A decision where I was denied $8,000.

THE COURT: Is that another case?

[30] MR. SIMMONS: Yes.

THE COURT: All right.

MR. SIMMONS: They have tried it so many times and it is about time they do something right. The attempt here is to come into court and confuse your Honor, and no matter who the judge, if he says yes, no, and they say yes or no, and first he said we are wrong. He admits the Attorney General's office got so confused. I grant you they didn't know which way to go. I have been with this through the proceedings and at one point the Attorney General's office, everybody was going to the clerk's office to ask for some direction. It is a sad state of affairs when they don't know who is on first base.

Now, as far as proof of the validity, I don't think that is Mr. Feingold's responsibility. That is my responsibility. If he wants to charge me 20 percent interest and I am agreeable, that is my responsibility and that is none of his business. Those are my funds that are being allocated and not theirs.

Now, 48-11, your Honor, is the statute that is applicable. If not applicable, then there has to be another statute. The State has no authority to proceed under any undertaking unless they are following some given statute. If 48-11 is not applicable, then I [31] want to know what is applicable, because they cannot operate without operating under the General Statutes. When he said there is no equity in this case, none of the proceedings were under 48-11. It is just back and forth. He has been vacilating and I couldn't make rhyme or reason of his statements. He said that they didn't have statutory – that Judge Shapiro did not have the statutory authority to pass title. What are they doing there? If these funds are not available, your Honor, to dispense and Judge Shapiro did not have the authority to pass title, then as I said in Federal Court, they have a 24-hour notice off the property. You can't keep

going on it for 20 years and using my property and say, hell, you are not going to use the money either. I think your Honor, you ought to put blinkers on and forget all of these statutes and double talk by the State and look at it from a practical aspect. Well, what has happened and what is happening? I am not going to be redundant. The liability is accumulating. He is very well aware of what happened and aware of the problems confronting the State. There is a means and method. The statutes are very clear. Well, the thing will be resolved. Well, if there was no statute applicable, then it would be a horse of a different color. I grant you I do an awful lot of [32] research myself and I find it very difficult to find a situation where what happens when they fail in condemnation or fail in their attempts in imminent domain. It is a unique situation. I did find one in New York State and I will give your Honor the quote and you can look at it, too, Mr. Feingold. Well, 205 2d, New York, 626.

THE COURT: Does this have anything to do with these motions which are in front of me today?

MR. SIMMONS: Only in the respect that he is attempting to put a roadblock before all payments. It is a paradoxical situation. Originally they were the ones that triggered the payment and claimed the debt off in the land records. They started it. Well, now we have a turnaround and they are saying, wait, we are not going to pay anybody any more. It is not his money or supposedly not his, it is the State's. That is the only relationship, your Honor. I say that money is mine or equivalent and they have to put a deposit up before they can put a foot on my property. It has not been done and I am treating this as though it were a deposit against the liability that is continuing. These

payments should be made and these other matters should be cleared up. Somebody will have to make a decision.

THE COURT: You say the money that is [33] there has to do not with payment for the land, but a deposit toward whatever future liability may be found?

MR. SIMMONS: That is correct.

THE COURT: All right.

MR. SIMMONS: A portion of the land, your Honor, common sense dictates there is considerable damage here. As I read to you, they took all of the building material and they cut the trees and never paid five cents for it. Then to have Attorney Feingold come in and say none of the money was for damages, and put that on the record, I mean, my God, how much more incriminating can it be? I ask your Honor to act favorably on all of these motions.

THE COURT: Thank you very much.

MR. BASS: If your Honor grants the motion I have prepared the order.

THE COURT: Do you have copies?

MR. BASS: Yes.

THE COURT: All right. Thank you.

* * *

CERTIFICATE

STATE OF CONNECTICUT

CASE NO. 163875	:	SUPERIOR COURT
AUGUSTUS SIMMONS	:	JUDICIAL DISTRICT
VS.	:	AT HARTFORD, CONNECTICUT
HORACE WETHERALL	:	JUNE 7, 1982

I hereby certify that the within and foregoing (33) pages constitute a true, complete and accurate transcript of the proceedings in the above-entitled matter, heard before Hon. Antoinette L. Dupont, Judge in the Superior Court, Judicial District of Hartford, at Hartford, Connecticut, on June 7, 1982.

Dated at Hartford, Connecticut, this 18th day of April, 1984.

/s/ Harold J. Moan, Sr.
Harold J. Moan, Sr.
Certified Court Reporter

EXHIBIT #2

NO. 163875

AUGUSTUS J. SIMMONS	:	SUPERIOR COURT
V.	:	HARTFORD COUNTY
HORACE B. WETHERELL, ET AL	:	JUNE 2, 1978

Present: Hon. Louis Shapiro, State Trial Referee

SUPPLEMENTAL JUDGMENT

This action by writ and complaint dated January 5, 1970 claiming money damages, came to this Court on the first Tuesday of February, 1970, and thence to December 13, 1977, when this action was consolidated with the following cases:

No. 202121	State of Connecticut v. Augustus J. Simmons;
No. 140965	State of Connecticut v. Anastasia Simmons, Augustus J. Simmons and Charles Simmons
No. 199230	Augustus J. Simmons v. Samuel Kanell, et al; and
No. 162923	Augustus J. Simmons v. Frank C. Parizek et al;

and said cases were referred to the undersigned and thence to January 4, 1978, when the parties appeared and stipulated as to judgment as on file and thence to the present time when the parties appeared on the defendants' motion for execution on judgment.

The Court, having heard the parties, finds that Augustus J. Simmons has refused to perform according to a stipulation for judgment and judgment dated January 4,

1978, and further finds that the defendants, Commissioner of Transportation and State of Connecticut, have offered and continue to offer to perform their obligations in accordance with said judgment.

The Court finds that taxes in the amount of $8,761.29, including interest, are due and owing to the Town of East Granby.

The Court, having heard evidence of an examination of the land records of the Town of East Granby, further finds that the following persons claim to have an interest in said premises by virtue of liens or encumbrances placed against said premises in accordance with the land records of said Town.

Vol. & Page	Parcel	Grantee	Instrument	Date	Amount
54/607	A	Jerome H. Diamond	Mtg.	7/9/73	$ 20,000
55/690	A	Jerome H. Diamond	Mod. of Mtg.	6/20/74	—
55/692	A	Jerome H. Diamond	Mtg.	6/27/74	$ 5,100
55/731	A	Thomas P. Byrne	Mtg.	7/8/74	$ 4,000
57/62	ABC	Leonidas D. Simmons	L/P	3/3/76	Divorce
57/385	ABC	C.B.T.	Judg.	6/11/76	$ 962.97
57/426	ABC	Htfd. Nat'l Bank	Attach.	6/21/76	$ 2,625.00
58/95	C	Leonard Allaire, et al	Judg.	3/15/77	$11,104.00

58/221	C	Patsy Valente, et al	Attach	4/28/77	$ 3,000.00
58/301	A	Angelo Roncari	Lsc.	5/24/77	—
59/253	C	Patsy Valente, et al	J/L	3/7/78	$ 2,490.00
59/263	C	Patsy Valente, et al	L/P	3/13/78	$ 3,000.00
59/266	C	Leonard Allaire, et al	L/P	3/13/78	$ 13,000
59/233	Portion of Parcel A	Westside Vallet Parking, Inc.	Lsc.	3/16/73	
59/419	AC	David B. Salzman, et al	Attach.	4/20/73	$ 105,000

WHEREUPON, IT IS ORDERED

1) That all encumbrances be removed and that title to the premises described in Exhibit A, attached hereto, together with covenants described in Exhibit B, attached hereto, against the land described in said Exhibit B is and are vested in the State of Connecticut in accordance with the judgment entered herein.

2) That the State of Connecticut pay to the Clerk of the Superior Court for Hartford County the sum of $385,600 in accordance with the provisions of said judgment.

3) That the Clerk of said Court pay to the tax collector together with accrued interest, lien, and release fees for the Town of East Granby the sum of $8,761.29/from the sum deposited.

4) That pursuant to Section 52-484 and/or Section 47-31 of the General Statutes, as the Court may deem applicable, the parties, encumbrancers and lienors described herein be and are cited to appear before the Court with proof of the amount and validity of their liens or encumbrances, that the Clerk make payment to said parties in accordance with the equities in said balance as determined by further order of the Court and that the balance thereafter, if any, be paid to the plaintiff.

/s/ Louis Shapiro
Louis Shapiro
State Trial Referee

CITATION

TO THE SHERIFFS OF THE COUNTIES OF HARTFORD AND NEW HAVEN, THE DEPUTIES OR EITHER CONSTABLE OF THE TOWNS OF HARTFORD, WEST HARTFORD, MERIDEN, WAREHOUSE, POINT, NEW BRITAIN, AND EAST GRANBY, WITHIN SAID COUNTIES,

GREETINGS:

BY AUTHORITY OF THE STATE OF CONNECTICUT: You are hereby commanded to summon Jerome H. Diamond, 25 Arlen Way, West Hartford, Conn., Thomas P. Byrne, Esq., 790 Farmington Avenue, West Hartford, Conn., Leonidas D. Simmons, c/o Danaher & Danaher, Esqs., 51 Parker Avenue, Meriden, Conn., Connecticut Bank & Trust Co., One Constitution Plaza, Hartford, Conn.; Hartford National Bank, 777 Main Street, Hartford, Conn., Leonard Allaire, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Patsy Valente, c/o

Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Westside Vallet Parking, Inc., c/o Charles Gersten, Esq., 234 Pearl Street, Hartford, Conn., David B. Salzman, c/o Jason Pearl, Esq., 19 S. High Street, New Britain, Conn., and Angelo J. Roncari, P.O. Box 268, East Granby, Conn. and them summon to appear before the Superior Court to be held in the County of Hartford at Hartford, on the first Tuesday of July, 1978, at 10:00 o'clock in the forenoon, said appearance to be made by said Jerome H. Diamond, Thomas P. Byrne, Leonidas D. Simmons, Connecticut Bank & Trust Company, Hartford National Bank, Leonard Allaire, Patsy Valente, Westside Vallet Parking, Inc., David B. Salzman, and Angelo J. Roncari, or their attorneys, on or before the second day following said return date, then and there to answer unto the Commissioner of Transportation of the State of Connecticut, of the Town of Wethersfield, County of Hartford, in a civil action, wherein the plaintiff complains and says:

Each lienor, encumbrancer and/or party cited herein shall state whether or not he or they claim any estate or interest in or encumbrance on the property described herein or any part thereof, and, if so, the nature and extent of the estate, interest or encumbrance which he or they claim, and he or they shall set out the manner in which such estate, interest or encumbrance is claimed to be derived.

PLAINTIFF,
COMMISSIONER OF
TRANSPORTATION
STATE OF CONNECTICUT

BY: CARL R. AJELLO
ATTORNEY GENERAL

/s/ William McQueeney
William A. McQueeney – 85340
AAG-Trans-6
P.O. Box 120
Hartford, Connecticut 06101

EXHIBIT A

PARCEL I

A certain piece or parcel of land, containing 5.97 acres, situated in the said Town of East Granby on the northeasterly side of Route #20, also known as Rainbow Road, and also known as Parcel C on a map entitled: "Property of Anastasia Simmons east side – Rainbow Road, East Granby, Conn. W.M. Alford Civil Engineer Windsor Conn. Scale 1 inch = 60 ft. October 1964", which map is on file in the Town Clerk's Office in said Town of East Granby and being more particularly bounded and described as follows:

Beginning at a point in the northeasterly side of Route #20 in the Town of East Granby which point is Six Hundred Ninety-Three (693) feet southeasterly from the southeasterly corner of land now or formerly of Charles Comer, as measured along the northeasterly line of Route #20;

Thence N 20° 27' 30" E along land now or formerly of Charles A. Simmons, Eight Hundred Sixty and Forty-Six One-Hundredths (860.46) feet to a point;

Thence S 29° 09' 50" E along land now or formerly of the State of Connecticut, One Hundred Sixty-Three and Seventy One-Hundredths (163.70) feet to a point;

Thence S 22° 23' 40" W along land now or formerly of the State of Connecticut, Eighty-One and Twenty-Four One-Hundredths (81.24) feet to a point;

Thence S 09° 18' 30" W along land now or formerly of the State of Connecticut, Fifty-Nine and Forty-Seven One-Hundredths (59.74) feet to a point;

Thence S 02° 13' 40" E along land now or formerly of the State of Connecticut, Ninety-One and Fifty-Five One-Hundredths (91.55) feet to a point;

Thence S 05° 06' 30" W along land now or formerly of the State of Connecticut, One Hundred Three and Seventy-Nine One-Hundredths (103.79) feet to a point;

Thence S 09° 29' 00" E along land now or formerly of the State of Connecticut, Seventy-Three and One One-Hundredths (73.01) feet to a point;

Thence S 03° 59' 20" W along land now or formerly of the State of Connecticut, One Hundred Seventeen and Four One-Hundredths (117.04) feet to a point;

Thence S 16° 13' 10" W along land now or formerly of the State of Connecticut, One Hundred Forty-Eight and Forty-Four One-Hundredths (148.44) feet to a point;

Thence S 20° 3' 00" W along land now or formerly of the State of Connecticut, Two Hundred Seventy-Four and Forty-Six One-Hundredths (274.46) feet to a point in the northerly line of Route #20.

Thence along a curve whose radius is 1834.86, a distance of Four Hundred Fifty and Ninety One-Hundredths (450.90) feet to a point or place of beginning.

PARCEL II

Said parcel as hereinafter described is shown on a map entitled: "Town of East Granby Map showing Property of Department of Transportation Rainbow Road – Route #20 Scale 1"=40' Karl F. Crawford Transportation Chief Engineer – Bureau of Highways January, 1978", which map is on file in the East Granby Town Clerk's Office.

A certain piece or parcel of land located on the northeasterly side of Route #20 in the Town of East Granby, County of Hartford and State of Connecticut, containing 1.12 acres, more or less, bounded and described as follows:

Beginning at the intersection of a former town road, a/k/a Bush Road and Old Route #20 approximately 348 feet from the East Granby-Windsor town line as measured along the northerly line of Old Route #20;

Thence proceeding westerly along Highway line known as Old Route #20 as shown on said map, a distance of 522 feet, more or less;

Thence in a northwesterly direction a distance of 66 feet, more or less to other land of Simmons;

Thence in an easterly direction a distance of 420 feet, more or less to the center of a former town road, a/k/a Bush Road;

Thence southeasterly along the center line of a former town road, a/k/a Bush Road, a distance of 230 feet, more or less to the point of beginning.

PARCEL III

A certain piece or parcel of land situated in the Town of East Granby, County of Hartford and State of Connecticut, consisting of 2.2 acres, more or less, as shown on a certain map entitled: "Town of East Granby Map showing Property of Dept. of Transportation of The State of Connecticut Rainbow Road – Route 20 Scale 1"=40' January 1978 Karl F. Crawford Transportation Chief Engineer – Bureau of Highways Revised 2-24-78 Town No. 39 – Misc. Project No. 5001 Serial No. 17 & 17A Sheet 2 of 2", which map is on file in the Town Clerk's Office in said Town of East Granby, and being more particularly bounded and described as follows:

NORTHERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, One Hundred Seventy-Four (174) feet, more or less;

EASTERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, Four Hundred Twenty-Five (425) feet, more or less;

SOUTHERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Thirty-Eight (338) feet, more or less; and

WESTERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Seventy-Eight (378) feet, more or less.

EXHIBIT B

A certain piece or parcel of land bounded and described on a map entitled: "Town of East Granby – Map showing property of Augustus J. Simmons – Rainbow

Road – Route 20 – Scale: 1 in. = 40 feet. Dated February 2, 1978, Karl F. Crawford, Transportation Chief Engineer" which map is on file in the Town Clerk's Office in said Town of East Granby, and hereafter referred to as "Retained Premises".

Augustus J. Simmons covenants with the State of Connecticut that, with regard to the "Retained Premises", the following covenants and restrictions shall run with the land and shall be effective so long as Bradley International Airport or its successors in title or name, continues to operate as a State or Federal Airport:

A. Height Restriction

No building, tree, tower, antenna, smokestack or flagpole, or any other structure or growth, natural or manmade, shall be allowed above the maximum elevation of 215.5 feet above sea level.

B. Lighting

No exterior lighting will be constructed or installed unless said lighting conforms to Federal standards in force at all times. Said standards are presently set forth in 14 Code of Federal Regulations Sections 77, et seq. Notice of any proposed construction shall be given to the Commissioner of Transportation at the same time it is given to the Federal Aviation Administration. In the event that prior approval from the Federal Aviation Administration, for this construction is required by 14 C.F.R. Sections 77, et seq. copies of said request and approval shall be sent to the Commissioner of the Department of Transportation for the State of Connecticut.

C. Right of First Refusal

The State of Connecticut shall have the right of first refusal in the event Grantor shall desire to sell the "Retained Premises". Such first refusal, however, shall be subject to the following conditions:

a) Grantor shall give to State of Connecticut written notice which notice shall state the terms and conditions of a bona fide written offer to the Grantor from a third party.

b) State of Connecticut shall have the right to purchase said "Retained Premises" by notifying the Grantor in writing within 90 days of receipt by State of such written offer. Such purchase by State shall be on the same terms and conditions as the offer received by Grantor from such third party.

c) In the event that State shall exercise its right to purchase in accordance with this paragraph, notice of its intent to exercise as provided in paragraph (b) shall be accompanied by a certified check to the order of Augustus J. Simmons heirs or assigns in the amount of 10% of the purchase price which shall be a deposit toward the purchase price of said "Retained Premises".

d) The transfer of title in accordance with the terms of such offer shall take place on or before thirty (30) days after receipt by Grantor of notice of State's intent to exercise its right of first refusal.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever, agree that the Premises owned by the State of Connecticut shall be used for aeronautic purposes, including the operation of all types of aircraft, both conventional propeller driven and jet powered, as well as any

other type of aircraft not heretofore operated from the airport, including but not limited to helicopters, and I further covenant and agree for myself, my heirs, administrators, and assigns that neither I nor any success in interest of mine, will have any cause, claim or right of action against the State of Connecticut, or any of its successors in interest, as a result of aeronautics operations on, over or through the Premises owned by the State of Connecticut as the result of noise resulting from said aircraft operations as it may affect the Retained Premises. This covenant and agreement shall also run with the land and shall be construed as a real covenant running with the land unless and until such time as, by agreement with the State of Connecticut, its successors assigns, this covenant is terminated.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever and my successors in interest specifically waive and relinquish any rights in law or equity relative to said noise from aeronautics operations relating to the Retained Premises.

STATE OF CONNECTICUT) SS
Hartford County)

I, Thomas H. Abraham, Clerk of the Superior Court of said State within and for said County, HEREBY CERTIFY the foregoing to be a true copy of record, of the Supplemental Judgment, in No. 163875, Augustus J. Simmons vs Horace B. Wetherell, et al.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Superior Court, at Hartford, in said County, this 5th day of June, 1978

[illegible] /s/ Thomas H. Abraham, CLERK.

[Illegible] June 5, 1978 at 4:01 P.M. [illegible] Asst. Town Clerk.

EXHIBIT 3

CLOSING REMARKS of proceedings held on April 19, 1978, at the offices of ROGIN, NASSAU, CAPLAN, LASSMAN and BORDEN, ESQUIRES, 111 Pearl Street, Hartford, Connecticut.

APPEARANCES:

Augustus (Ozzie) Simmons

John Kataja

David Salzman, Esq.

Stephen Silverman, Esq.

Ned Rogin, Esq.

Phillip Robbins, Esq.

F. D. Neusner, Esq.

Dennis Cemeriva, Esq.

Robert L. Hirtle, Esq.

Reported by:

William G. Crampton
Certified Shorthand Reporter
Notary Public

* * *

[8] delivery of the deeds, of course.

MR. HIRTLE: Mr. Simmons, as I understand it you don't want to proceed further with the closing, is that correct?

MR. SIMMONS: Bob Hirtle, I have the highest respect for you just like I sent you the letter, I have the

highest and utmost respect for Referee Shapiro and I further qualified it by saying that I am not going to be a party to any deal which is going to be coming out and being made public whereby the Rogin firm and my good friends here, Dave Salzman and Steve, who I have been very prone to pick on. It is just not fair to everybody to have this kind of an arrangement and I am not going to be a party to it. What the State is attempting to do here is to say okay let's date this thing back so their skirts are clean. They want me to go back and do battle with the Town over the taxes and I say bullshit to that. We are going to clear that matter up before there will be any Goddamned closing. We are going to get that cleared up and they are going to be open and above board. I don't care if it is Referee Shapiro. Hell, it is everybody and I'm telling you, everyone at the table, everything is going to be above board and no dealing is going back to November of '64.

MR. HIRTLE: You will not sign a deed today to consummate the closing, is that what I understand?

MR. SIMMONS: Because the agreement states and [9] I have to say if any portion of it is a nullity then it is a nullity and I am not going to be a party to anything that is a nullity.

MR. NEUSNER: Is that a definite negative answer?

MR. HIRTLE: You are instructing counsel not to proceed with the closing because you consider it to be a nullity?

MR. SIMMONS: I am going to answer you Bob by saying that I sent you a certified letter expressing my position and when I talked to you on the phone, I said to

myself, at least I am going to give them the courtesy of putting in an appearance today. I think that is a sufficient answer.

MR. HIRTLE: So I am not to proceed to closing and you will not sign the deeds today?

MR. SIMMONS: That is correct.

MR. HIRTLE: And the meeting is adjourned.

(Whereupon at 11:44 o'clock a. m. the closing was adjourned).

* * *

EXHIBIT 4

STATE OF CONNECTICUT	: SUPERIOR COURT
VS.	: HARTFORD COUNTY
AUGUSTUS J. SIMMONS	: APRIL 19, 1978

NO. 199230-9

AUGUSTUS J. SIMMONS

VS.

SAMUEL KANELL, ET AL

NO. 140965

STATE OF CONNECTICUT

VS.

ANASTASIA SIMMONS
AUGUSTUS J. SIMMONS and
CHARLES SIMMONS

NO. 162923

AUGUSTUS J. SIMMONS

VS.

FRANK C. PARIZEK, ET AL

NO. 163875

AUGUSTUS J. SIMMONS

VS.

HORACE B. WETHERELL,
ET AL

The undersigned respectfully move for the permission of the Court to withdraw as counsel for Augustus J. Simmons in the above-captioned matters.

/s/ Robert L. Hirtle, Jr.
ROGIN, NASSAU, CAPLAN,
LASSMAN AND HIRTLE

/s/ David B. Salzman
DAVID B. SALZMAN, ESQUIRE

/s/ Stephen W. Silverman
STEPHEN SILVERMAN, ESQUIRE

ORDER

The foregoing motion is granted/denied.

BY THE COURT

_____
Clerk

This is to certify that the foregoing has been mailed this day to counsel of record and to the plaintiff.

/s/ Robert L. Hirtle, Jr.
Robert L. Hirtle, Jr.

EXHIBIT 5

CV-70
CASE NO. 16 38 75

AUGUSTUS SIMMONS	:	SUPERIOR COURT
vs.	:	HARTFORD JUDICIAL DISTRICT
HORACE WETHERALL, ET AL	:	OCTOBER 15, 1991

MOTION TO TRANSFER FUNDS

Since 1978 the Clerk's Office has been the Custodian of moneys deposited in the above case. The money was to be paid out upon consumation of a transfer of certain real estate by the named plaintiff. Such a transfer has not yet occured.

Attached to this motion are memos from the Treasurer of the State of Connecticut and from the Court Operations Unit of the Judicial Branch in explanation of this motion. The Clerk's Office requests the granting of this motion to transfer.

/s/ Lucian J. Jachimowicz
LUCIAN J. JACHIMOWICZ
CHIEF CLERK

[Off – parties have met 11/8/91 and will work out a stipulation to be presented to the court for the withdrawal of all funds and closing of file.

/s/ Aronson, J.
ARONSON, J. 11/8/91]

The Court, having heard the parties, grants the motion.

_____

Judge

EXHIBIT 6

Law Offices
Jason E. Pearl
19 SOUTH HIGH STREET
POST OFFICE BOX 183
New Britain, Connecticut 06050

Jason E. Pearl — Telephone

Kenneth J. Speyer — (203) 229-1603

August 30, 1979

The Honorable John Daly
Superior Court
95 Washington Street
Hartford, CT

Re: David Salzman
Vs: Augustus Simmons
Docket No. 218559 8

Dear Judge:

First of all, welcome back from vacation.

While you were away on August 13 I received a telephone call from one of the assistant clerks advising me that if I wished to reargue my Motion For Turnover dated July 25, 1979, I would have to claim it for the Short Calendar. I was rather taken back by this announcement inasmuch as my file indicates that you granted the motion in open court on July 27, 1979. I recall you speaking to me briefly subsequent to that time indicating that you were going to meet with Mr. Abraham with respect to the order, but you did not indicate to me that you had vacated your prior decision. I would assume that for me to be put into the position of having to "reargue" your prior decision would

have to be revoked. Until that happens, I really do not know what there is for me to argue.

I would be most appreciative of your guidance in this matter.

Yours very truly,

/s/ Jason E. Pearl
Jason E. Pearl, Esq.

JEP/ck
1888

[Hearing set up for 9/12/79 at 2:00 p.m.]

EXHIBIT 6A

Linda

Based on SHELTON v WOLTHAUSEN, 80C 599 (furnished by Lucian) I would have no authority to grant this motion. Will you kindly notify Jason Pearl regarding this & if he wishes to argue the matter put it down.

Thanks

EXHIBIT #7

December 1, 1996

Town Clerk
Town Hall
9 Center Street
East Granby, CT 06026

Dear Clerk,

The subject matter of this letter pertains to: *DISSOLUTION OF ATTACHMENTS PURSUANT TO C.G.S. § 52-327.*

1. Plaintiff-owner-interested person Augustus J. Simmons requests the following listed encumberances be endorsed on the record of such attachment with the words "*DISCHARGED BY OPERATION OF LAW*" pursuant to Connecticut General Statute § 52-327.

2. The attachments on the public land records under the caption of *Augustus J. Simmons v Horace B. Wetherall*, CV-70-163875 by private counsel, without any eminent domain proceedings in existence-or-initiated for attachment purposes, without any notice or service of process on interested parties, without any return of service to the court of competent jurisdiction (Superior Court) prior to or after the attachment, and, without appraisals to establish fair-market value that are mandatory, including a transfer of title under plaintiff's private tort action, Docket #163875 are:

Vol. 59, p. 657-668
Vol. 59, p. 654-656
Vol. 59, p. 623-626
Map Book 17, page 853
Map Book 17, page 854

3. Included in Vol. 59, p. 657-668 is a citation at page 661-662 of names of parties and institutions to be served with notice with a return day of the first Tuesday of July, 1978.

4. Vol. 59, p. 661-662 *DOES NOT* list Augustus J. Simmons for notice and service, however, he is still an "interested person," – he just happens to be the owner.

5. That there was *NO* officer's service on any parties, *NO* written return of his (officer's) precept to the court of competent jurisdiction (Superior Court) and *NO* compensation paid is evident in a letter from Atty. Tom Byrne, a copy being submitted as an exhibit showing an encumbrance at Vol. 55, page 731 (1974) of East Granby land records (also listed in the citation at Vol. 59, p. 661-2) that is still outstanding.

The listed attachments in item #2 were recorded on June 2nd and 5th of 1978 which is a much longer period than *FIFTEEN YEARS* from date of attachment.

6. The interested person (owner) submits a sworn testimonial from Atty. Walter Bass before Hon. Dupont, A. on June 7, 1982 representing "Valente's" and "Allaire's" with outstanding liens at Vol. 58, p. 95; Vol. 58, p. 221; 59/253; 59/263; 59/266 (trans. p. 26) that states:

"Your Honor, in Mr. Feingold's recitation that he gave Your Honor this morning, I forget which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the court that in the citation, my two clients were listed under the care of my office. I will state to the court that I have never been served any citation nor has my clients even been

served with any kind of a citation to give us any notice to come in to determine what our priorities are in this matter."

The above citations of Valente and Allaire are (also listed in the citation at Vol. 59, p. 661-2).

7. The caption *Simmons v Wetherall*, #163875, a tort action *AGAINST* the state, a result of Special Act #170 of the 1969 legislature, *CANNOT* be TRANSMOGRIFIED into an eminent domain action by superimposing the Connecticut Department of Transportation as plaintiff (Vol. 59, p. 662), by private counsel, for land acquisition for federal navigational instrumentation projects, per federal grant agreement 9-06-009-5708 (1955), that must be acquired pursuant to federal regulations, constituting a fraudulent encumberance.

8. Under the law of Connecticut, any lien created by attachment continues for 60 days after judgment and no longer. If no execution is taken out before that time, the lien perishes. *Sanford v Pond*, (1871) 37 Conn. 588.

9. Where it is unambiguously clear there was no notice, no service, or, return to the court of competent jurisdiction, no judgment file or record of any kind before the court of competent jurisdiction under Docket #163875, and, the listed return day was the first Tuesday of *July, 1978* (Vol. 59, p. 661) and the attachments were submitted on June 2nd and 5th of 1978, some of which contained a court stamp of the Court Clerk (Thomas H. Abraham) of Superior Court to give the appearance of authenticity to the public is FRAUD upon the court, the public, and the "interested persons" named in the citation.

Court records show the succeeding Chief Clerk, (Lucian Jachomovitz) informing Hon. Judge John Day in

August, 1979 there were *NO* proceedings before the Superior Court, consequently the Superior Court was without jurisdiction to act, referencing the citation of *Shelton v Wolthausen*, 80 c 599.

10. Court records show a motion filed with Judge Aronson by plaintiff-owner-interested person (Simmons) that jurisdiction could not be created "sua sponte" in December, 1991 relative to the notice from the court to Atty. Tom Byrne, and others, and as a result of said motion the "slush fund" monies being held under the direction of the court were ABANDONED.

11. Unquestionably, there is years, not months or days beyond the statutory fifteen (15) years referenced and "DISCHARGED BY OPERATION OF LAW" is the purpose and request of this letter.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

cc: Exhibits

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§ 52-327 **CIVIL ACTIONS**
Title 52

§ 52-327. Duration and release of attachment liens on real estate

No attachment of real estate shall continue in force as a lien for a longer period than fifteen years after the date thereof unless within said period the action in which such

attachment was made has been prosecuted to effect and a judgment lien filed according to law. All attachments of real estate which have expired as a lien by the provisions of this section shall be deemed dissolved and the real estate shall be free from any lien or encumbrance by reason of the same and the town clerk of the town in which such real estate is situated shall, upon the request of any person interested, endorse on the record of such attachment the words "discharged by operation of law." (1949 Rev., § 8026.)

CERTIFICATION

Plaintiff-owner-interested person hereby certifies that a copy of this Request of Dissolution Pursuant to C.G.S. § 52-327 will be – hand delivered to:

Chief Clerk
Superior Court
95 Washington St.
Hartford, CT 06106

(to be put in *Simmons v Wetherall*, #163875 file)

Will be mailed, postage prepaid, first class to:

J. William Burns, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. Box 317546
Newington, CT 06131-7546

Atty. Tom Byrne
2-E Farmington Commons
790 Farmington Ave.
Farmington, CT 06032

Otto P. Witt, Esq. & Associates
185 Silas Deane Highway
Wethersfield, CT 06109

Robert S. Bartanowicz, Regional Director
Federal Aviation Administration
12 New England Executive Park
Burlington, MA 01803

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

December 1, 1996

Chief Clerk
Superior Court
95 Washington St.
Hartford, CT 06106

Dear Michael,

The attached "Dissolution of Attachments Pursuant to C.G.S. § 52-327" filed under the caption of *Simmons v Wetherall*, #163875 is being submitted to be made part of the #163875 "damages" file.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

LAW OFFICES

BYRNE & BYRNE
2-E FARMINGTON COMMONS
790 FARMINGTON AVENUE
FARMINGTON, CONNECTICUT 06032

THOMAS P. BYRNE
STEVEN E. BYRNE

TELEPHONE
(203) 677-7355

25 November 1996

Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095

Dear Ozzie,

The only activity of which I am aware with respect to a mortgage dated July 3, 1974 as recorded in Volume 55 Page 731 of the East Granby Land Records is notice of a hearing to be held before Arnold Aronson, Judge of the Superior Court, on December 23, 1991 to determine the disposition of funds.

Enclosed herewith is a copy of the notice which I received from the court as well as a copy of a letter to me dated December 19, 1991 from Attorney Walter E. Bass, Jr. I did not attend the hearing of December 23, 1991.

No payments have been received by me on this mortgage.

Very truly yours,

/s/ Thomas P. Byrne
Thomas P. Byrne

TPB:pwb
Encl

AUGUSTUS J SIMMONS VS.
WETHERALL,DEP COMR CV-70-0163875-S

ALL COUNSEL AND PRO SE PARTIES ARE ORDERED TO APPEAR BEFORE THE HONORABLE ARNOLD ARONSON ON MONDAY, DECEMBER 23, 1991AT 9 30 A.M. IN ROOM 111 AT HARTFORD SUPERIOR COURT, 95 WASHINGTON ST., HARTFORD, CT. A MOTION BY THE COURT TO DETERMINE THE DISPOSITION OF FUNDS WILL BE HEARD.

A COPY OF SAID MOTION WILL BE SENT TO ALL COUNSEL AND PRO SE PARTIESUNDER SEPARATE COVER.

KAREN PICKER
ASSISTANT CLERK

SUPERIOR COURT
WASHINGTON STREET
DRAWER D, STATION A
HARTFORD,
CONNECTICUT 06106

WALTER E BASS JR
P. O. BOX 289
EAST WINDSOR CT 06088

DATED DEC 05, 1991

Law Office of
Walter E. Bass, Jr.
P.O. Box 289
Warehouse Point, Conn. 06088
Tel. 623-8688 Juris Number 02450

December 19, 1991

Attorney Thomas Byrnes
790 Farmington Avenue
Farmington, CT 06032

RE: Augustus J. Simmons
vs.
Horace Wetherell, et al

Dear Attorney Byrnes:

Please be informed that my office represents several creditors of Mr. Augustus J. Simmons. Please be informed that Judge Arnold Arsonson is holding a hearing on December 23, 1991 at 9:30 a.m. in Courtroom 111 at Hartford Superior Court. Enclosed please find a copy of a Notice which my office has received concerning this hearing. I would like to inform you, that I do believe that you have an interest in this case. I request that you be present at this hearing.

If you have any questions, please feel free to contact my office.

Respectfully,

/s/ [Illegible]
Walter E. Bass, Jr.

WEBJr./mf

RECEIVED DECEMBER 2, 1996 AT 8:30 A.M.
BY Laura B. LaFond
ASS'T. TOWN CLERK

Received 12/2, 1996

at 8:30 A.M.

Recorded in EAST GRANBY LAND RECORDS

Volume 112 Page 001

By Laura B. LaFond
Asst. Town Clerk

Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095